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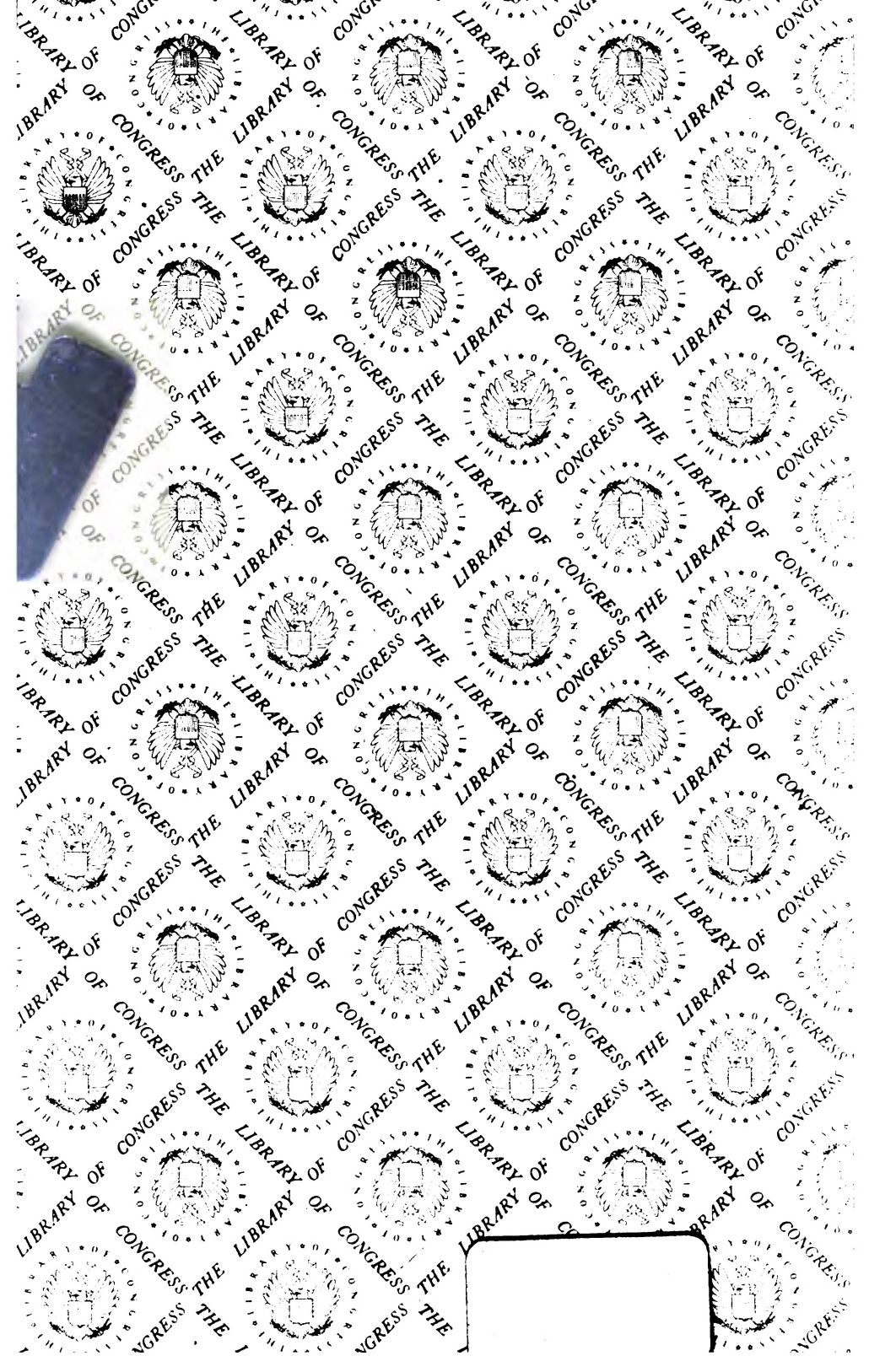
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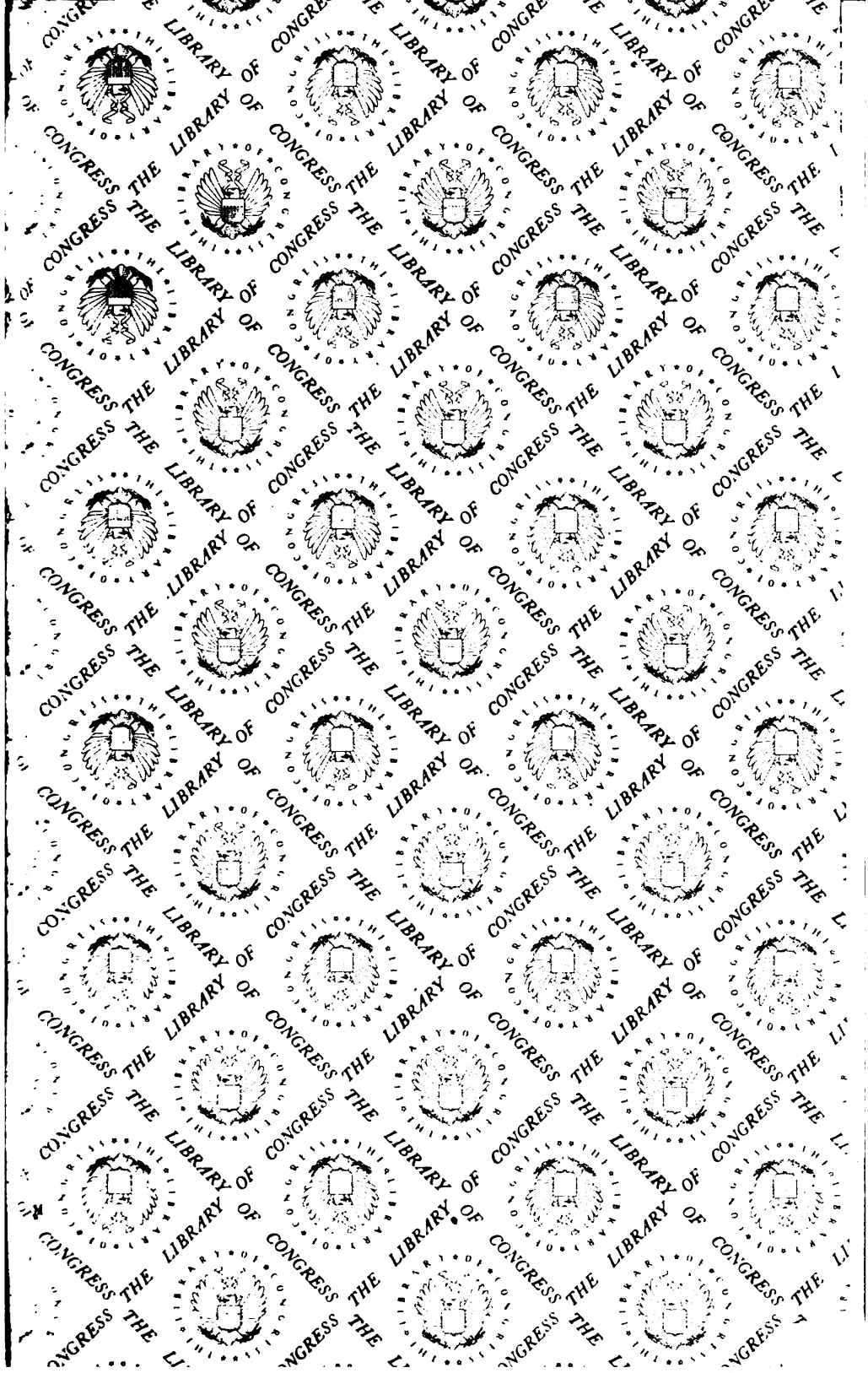
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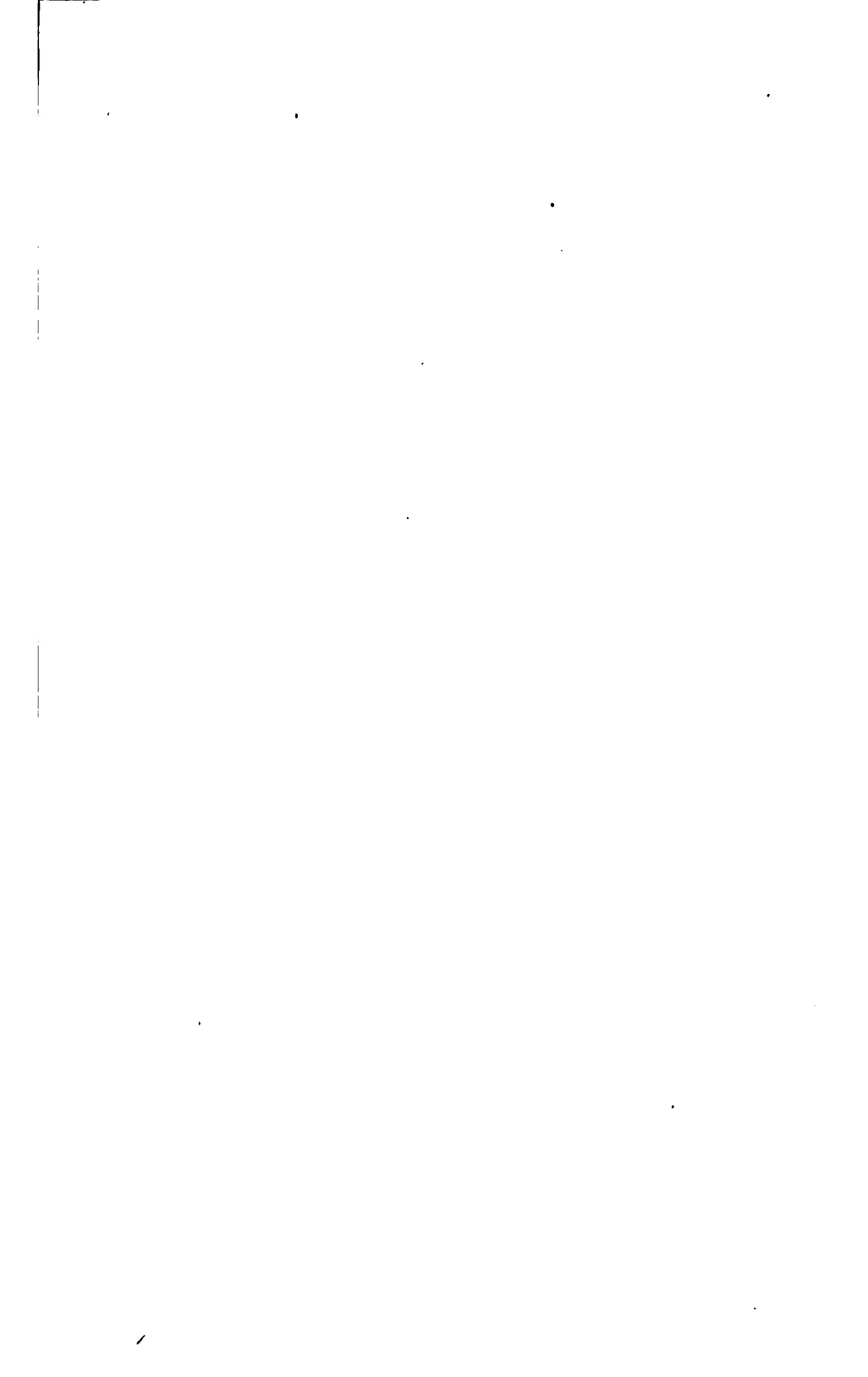
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HEARINGS

BEFORE THE

COMMITTEE ON IMMIGRATION AND NATURALIZATION

OF THE

HOUSE OF REPRESENTATIVES,

JANUARY 23, 1906, TO MARCH 6, 1906,
INCLUSIVE,

ON THE BILLS

TO ESTABLISH A BUREAU OF NATURALIZATION, AND TO
PROVIDE FOR A UNIFORM RULE FOR THE NATURAL-
IZATION OF ALIENS THROUGHOUT THE UNITED
STATES, AND ON THE DIFFERENT BILLS
REFERRING TO THE SUBJECT OF
RESTRICTING IMMIGRATION.

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UNIFORM RULE FOR THE NATURALIZATION OF ALIENS.

COMMITTEE ON IMMIGRATION AND NATURALIZATION,
HOUSE OF REPRESENTATIVES,
Tuesday, January 23, 1906.

The committee met at 10 o'clock, Hon. Benjamin F. Howell in the chair.

Present, the chairman (Mr. Howell) and Messrs. Adams, Bennett, Ellerbe, Burnett, Wood, Bonyne, Moore, and Hayes.

There were also present Messrs. Purdy, Hunt, and Campbell, comprising the Commission on Naturalization; Mr. Richard P. Morle, clerk of the United States district court for the eastern district of New York; Mr. Robert F. Randall, of Brooklyn, N. Y., and other gentlemen interested in the proposed legislation.

STATEMENT OF MR. GAILLARD HUNT, ONE OF THE COMMISSIONERS ON NATURALIZATION, STATE DEPARTMENT.

Mr. HUNT (having first made a statement which was not reported). I will now take up the difference between our bill and the bill submitted by the majority.

Mr. BONYNE. Suppose we have that read first before you discuss it.

Mr. HUNT. Section 16, page 13, is as follows (reading):

That the children of persons who have been duly naturalized under the provisions of this law, who were under the age of 16 years at the time of the naturalization of their parents, shall, if dwelling in the United States at the time of their parents' naturalization, or upon coming to the United States, under the age of 16, after their parents' naturalization and dwelling therein, be considered as citizens thereof.

Mr. WOOD. You provide that the law shall remain as it now stands in regard to minor foreign-born children becoming citizens on the naturalization of their parents?

Mr. HUNT. That is it.

Mr. WOOD. You claim it would be unwise to make any restriction and only admit to citizenship on the naturalization of their parents children under 16; you claim that all minor foreign-born children under the age of 21 should, by the naturalization of their parents, become citizens?

Mr. HUNT. Yes, if dwelling in the United States. That is an extremely important section, because it touches the question of human rights—citizenship rights. The law of every country in the world except the United States is that the citizenship follows the

citizenship of the parents. The United States has the law that a man's birth, anybody born in the United States of any sort of parents under any circumstances whatsoever, except in a legation of the United States, is a citizen of the United States.

That was the common law of England, but that was definitely abolished in 1870 in England, and England now recognizes the right of citizenship by descent, that being the Code Napoleon and the law everywhere in the world, and the United States has it by statute in this act, which confers upon the minor children of a man naturalized his citizenship if they are dwelling in the United States. You observe it confers no rights on them if the child is dwelling outside of the United States, because no country can naturalize anybody who is not in its own domains, but the instant that the child comes to the United States to dwell, that child is a citizen of the United States, under the law. Now, the Commission is split in three on the subject.

The Department of Justice member proposes that only children who come to the United States under the age of 16 shall inherit their father's citizenship; the Commissioner from the Department of Commerce and Labor proposes that they shall not inherit any citizenship, but be aliens until they reach the age of 21 years, when they can be naturalized like anyone else. As I say, this is the law of the rest of the world, that the citizenship of the parents confers citizenship upon the children if dwelling in the country where the father was naturalized, and it is the custom of many naturalized citizens of the best class to come to the United States and, after establishing a home here become naturalized, send for the wife and children, and they send for the children, of course, for good. The children come here; they find the father an American citizen; they go to American schools; they grow up as Americans, and when they reach the age of 21 they vote, and from the time they come here they are American citizens.

Now, you can say that a child is not a citizen until he is 21; we know a child is a citizen from the instant he is born, and its citizenship is often a matter of vital importance to it. For example, a child under the age of 21 can serve in the militia, can go to Annapolis or West Point, can inherit real property anywhere in the United State. If he is an alien he can not do many of those things in parts of the United States, and in some of them he can not do any of them. He is liable to military service from the time he is about 16 or 18 years of age; but if he is not a citizen of the United States he is not liable to it. Now, if you say that the father's citizenship shall not confer citizenship upon the children, you have an increasing number of families in the United States in which the parents are citizens of the United States and the children are aliens; not only are they aliens so far as we go, but if you pass such a law as this you make them aliens of every country.

No country has a right to make its residents citizens of nowhere, but that is the effect of such a law as that. If that child, coming here under the proposition of the majority, coming here at the age of 16 years, wishes to go back or wishes to go to a German university or anywhere else, it can not go under the protection of the United States; it can not go under the protection of the country in which it was born, because, under the rule of the country, the citizenship of

the child follows the father. So that the child goes as nothing; and it might be impressed in the military service, being of the age for it, and the United States would be powerless to intervene; and if such a law were passed it would sweep a whole class, of increasing proportions, into helpless aliens. There would be nothing to be done for them until they reached the age of 21. All that could be done would be to keep them home, and, keeping them, you could not demand of them the duties of an American child or young man.

Mr. BONYNGE. What are the provisions of that bill?

Mr. HUNT. None. The existing law to stand; and it happens that the existing law is the oldest continuous statute we have on the subject of citizenship. It was enacted in 1790, and has remained there ever since. It follows the Virginia law. The point I make about it is that although this committee has had before it a large number of bills on the subject of citizenship and naturalization, it has never had before it a complaint concerning the citizenship of the children being derived from parents; so to make a new law on the subject is to strike at an imaginary evil.

Mr. BENNET. Would there be any objection if on this page 13, section 16, the words "under the age of 16" were stricken out?

Mr. HUNT. That is merely the old law over again. I would let it alone.

Mr. BENNET. Then add after the end, "except for the purpose of voting." I will explain to you why that is. In our State we have in large cities the registration of voters, and every man is asked, when he attempts to register, whether he is native born or a naturalized citizen, and if he is a naturalized citizen he is made to produce his papers, which is right and proper. Along comes a man. They ask him if he is native born. He says no. "Are you naturalized?" "No." "How do you vote?" "On my father's papers." "Where are your father's papers?" "I don't know." "Where was he naturalized?" "I think here in New York." "When?" "Oh, about twenty-five years ago." "What court?" "The court down in the city hall." There is no court there, and never has been. They can not stop that man from voting.

Mr. HUNT. Why not?

Mr. BENNET. How can they?

Mr. HUNT. He hasn't got the proof of his citizenship.

Mr. BENNET. You can not make a man produce a thing that is not under his control.

Mr. HUNT. You will excuse me; the record of his father's naturalization exists and he can get a transcript of it.

Mr. BENNET. I suppose that is true. That ought to be true, but it is not. There are lots of men who have naturalization papers who think they are naturalized and are perfectly honest about it, and as to whom there is no record of their naturalization in existence.

Mr. HUNT. I know that. That is a disagreeable condition we have before us constantly in the State Department.

Mr. BENNET. Would there be any particular hardship to put the bill in the shape you want it as to citizenship and then provide that while it confers the rights of citizenship it does not confer the right of voting?

Mr. HUNT. Would you say voting for any purpose?

Mr. BENNET. For any purpose.

Mr. HUNT. I doubt if Congress has the power to say so.

Mr. BENNET. Only on Congressional and Presidential elections.

Mr. HUNT. Yes.

Mr. HAYES. Is it not a universal law in all the civilized countries that a man does not cease to be a citizen of the country of his nativity until he has become a citizen of some other country?

Mr. HUNT. Oh, no; if he resides outside of his country he loses his citizenship under varying conditions; for example, the law of the Netherlands is that a man who resides outside the Netherlands for ten years loses his citizenship; that expatriates him.

Mr. HAYES. That is not true of most countries; if the Netherlands has that rule, it is probably the only one. In nearly all countries a man does not cease to be a citizen of the country where he was born until he becomes a citizen somewhere else.

Mr. HUNT. That is not the practice even of the United States.

Mr. HAYES. You know that in England, until in 1870, they did not admit that a man could expatriate himself.

Mr. HUNT. A man substantially expatriates himself for every purpose for which citizenship is valuable if he lives abroad, although living abroad he has not taken a citizenship in any other country. That is the position of the United States, and that must be the position of most countries, since most countries provide that no man shall be naturalized unless he is a permanent resident and intends to permanently reside in that country. That is the point where our law is so weak. But there is another reason why I object to this—

Mr. HAYES. I wanted to suggest another thing. I understood you to state that there had been no objection to the law as producing any frauds. Now, my own State and in my district within the last six months a man who has voted for forty years has been arrested for voting and not being naturalized, voting on his father's papers, and I have no doubt from my own observation that there are thousands of such cases all over the United States. Now, this law, if it be passed, is to avoid fraudulent and illegal registration. I would like you to suggest how you can avoid that sort of thing.

Mr. HUNT. I do not understand that you object to that man being a citizen if his father were naturalized—you do not object to that.

Mr. HAYES. But he was not naturalized.

Mr. HUNT. Well, that is a question of fraud; but the question of proof is all that you object to. You do not object to the doctrine?

Mr. BENNET. No.

Mr. BONYNGE. You do not object to the doctrine that a man would be entitled to vote if he came here as a minor child and his father afterwards became naturalized?

Mr. HAYES. I object until he has had sufficient experience to understand the country—to understand something about the laws here.

Mr. BENNET. I have no objection to the doctrine, but I think we ought to make the amendment for this reason, that it is absolutely—it is almost, as a matter of practical working, an impossibility to make a man produce something that is not under his control, and that you can not always get certificates of, and there is no particular hardship, if he wants to vote, to go through the form of naturalization. Confer all the other rights for his own protection, but make him get naturalized and produce his own papers.

Mr. HUNT. You would have them naturalized when they are under 21?

Mr. HAYES. Yes; because he says this, sometimes truthfully and sometimes lies about it: "I don't know what court my father was naturalized in."

Mr. HUNT. He is often subject to great hardship in producing the papers, in producing the proof.

Mr. HAYES. Yes. Now, I have a friend who took what seems to be the proper course. His father was naturalized. When he got to be 21 years of age he went to the court and became naturalized himself. I don't think the court has the right to naturalize him, because he could not forswear allegiance to Scotland, the King of Great Britain, but they did naturalize him, and he has his own papers, and I think every alien who wants to vote at Presidential elections ought to be made to do the same thing.

Mr. HUNT. What I object to is disturbing this doctrine of the citizenship of the parent—that the citizenship of the parent shall confer citizenship upon the children if resident in the United States.

Mr. BENNET. Are not citizenship rights and voting rights two different things?

Mr. HUNT. Two separate, distinct, and different things. There are eight States in the United States where an alien can vote.

Mr. WOOD. One of your objections to this bill is that minor foreign-born children, between 16 and 21 years of age, would lose their citizenship in the country of their birth and would not acquire citizenship here, and therefore they would be denationalized.

Mr. HAYES. Pursuing this line of thought, do you see any objection to the provision here or one even more drastic, except the one you suggest?

Mr. HUNT. What is that?

Mr. HAYES. Do you see any objection to this provision here in regard to minors or even one more drastic, so that a minor no matter what his age would have to be naturalized, except the one you suggest?

Mr. HUNT. I suggest nothing; my suggestion is to let it alone.

Mr. HAYES. I know, but you suggested that a man was a citizen of no country and would not be entitled to the protection of any government. I say, do you see any other objection to such provision except that one?

Mr. HUNT. The hardship and injustice upon the children—that disturbance of the proper relation of parent and child; the manner of the inheritance is a very important matter. As you know, an alien can not inherit real property in many parts of the United States. I think that is generally universal. So here is a man that is a citizen of the United States and can not leave his real property to his own children because they are aliens. He would have to leave it in some sort of a cooked-up trusteeship until they reach the age of 21 and could acquire it.

There is another thing I would like to tell the committee about this section. Secretary Hay a year ago addressed a letter to Mr. Hitt and a letter to Mr. Cullom, asking for the creation of a commission on citizenship to inquire into the status of minor children and the status of married women, which is now undefined, and the status of Americans who go abroad without intending to come back, and various other matters touching the question of citizenship, and expatriation,

and residence abroad. Those are matters that do not in any way concern the question of naturalization, and before such a commission, if it were created, would come this question, and after it had been inquired into there might be a recommendation similar to this, but our inquiry was not into this except incidentally, and this should be classed with those other vital questions of citizenship of women, expatriation, length of residence permitted abroad, and the citizenship of minor children of all kinds.

Of course I am not at liberty to say what the Department will do, but the question of reviving that request for a citizenship commission is now before Secretary Root, and thus far has met with his approval, and I would prefer—and I think everybody who has examined into the subject would prefer—that if any change of the fundamental rights of children is to be made it should be made after careful inquiry, directed especially to that subject by a commission made for that purpose.

Mr. BONYNGE. But as this deals simply with the question of voting, would it not be possible to frame such an amendment as Mr. Bennet has suggested, so that even although they were citizens before they would have the right to vote they would have to acquire some proof of that right, that they would be obliged to submit before they would be entitled to vote?

Mr. HUNT. That would be an excellent provision, if you are satisfied of the power of Congress to do it.

Mr. BONYNGE. So far as the election of Presidential electors and members of Congress is concerned, we certainly would have the power.

Mr. HUNT. Yes. I would think it would complicate matters by allowing a man to vote for a State officer on no papers and require him to get papers in order for him to vote for a national officer.

Mr. BENNET. If he could only vote every other year he would certainly get naturalized.

Mr. BONYNGE. But at the same election he would be required to vote on one ballot for national officers and for State officers.

Mr. HUNT. His ballot would be good so far as State officers were concerned.

Mr. BONYNGE. It would not be good so far as Presidential electors were concerned or members of Congress were concerned.

Here is a man that can vote, due to the naturalization of his parents. He asks for a ballot, and they would have to give it to him. The officers could not watch when he got in the booth and see that he voted for one set of officers and did not vote for the other set of officers.

Mr. WOOD. If some States had the law and others did not there would be a lack of uniformity then more than ever in regard to the different States and the qualifications necessary for voting, simply at Presidential elections.

The ballot would be good as to some, but not as to others. You suggested that the States might pass a law to make it more uniform. They might conform in that way.

Mr. BENNET. I think they would all have to conform to a law of Congress.

Mr. WOOD. Whether it would be a matter of violation on the part of each State you would have a greater want of uniformity than ever.

Mr. BONYNGE. Take the last election, when you were elected.

Mr. BENNET. Yes.

Mr. BONYNGE. Suppose a child of parents who had been naturalized went into vote, relying on the naturalization of his parents for his rights, and assuming that this law was passed, such as you suggest, he would be permitted to vote for the State officers, but would have no right to vote for Presidential electors or members of Congress. Now, how would you have segregated those two rights?

Mr. BENNET. The State would have to pass a law in relation to two ballots.

Mr. WOOD. We can not control the States.

Mr. BENNET. Then, so far as the State goes——

Mr. WOOD. We can not make it uniform; a man might be able to qualify as to the State law, as suggested by Mr. Bonynge, and could not qualify as to the vote for national officers. Therefore his vote would be good as to the State officers on the ticket, but not good as to the national officers.

Mr. HAYES. I want to ask Mr. Hunt if he knows of any other country, except the Netherlands—and of that I was not aware—where mere absence from the country for ten years will expatriate a citizen?

Mr. HUNT. I think that is the law of nearly all countries.

Mr. HAYES. I think not.

Mr. HUNT. Great Britain does not enforce any such law, but then Great Britain does not naturalize any man unless he swears that he intends to reside permanently in Great Britain. Now, if he went abroad and did not reside permanently in Great Britain he would expatriate himself.

Mr. HAYES. No, no; not under the law of Great Britain.

Mr. WOOD. A minor child of a naturalized citizen living in the United States could not with any grace ask for the protection of the country of his father's birth so long as he was living in the United States, could he?

Mr. HUNT. If a child went abroad and went into the country in which his father was born, probably that country would protect him, although a citizen of Great Britain who goes abroad loses his citizenship and his wife and children lose theirs.

Mr. WOOD. But when they return their citizenship is restored.

Mr. HUNT. The point is, if he went back to the country of his origin I assume that he would be protected.

Mr. WOOD. He would not be protected either by the country of his birth or the country in which his parents have been naturalized, and, furthermore, would it not put the children of parents who were temporarily residing abroad, citizens of the United States, upon a more favorable plane as citizens by virtue of that fact than those living in this country, foreign-born children of parents who have been naturalized in this country? I understand the law is that if a child be born of naturalized or native-born American citizens abroad they become American citizens. Is not that the fact?

Mr. HUNT. There is a distinction there. This law affects children born before the father's naturalization—born when the father was an alien. Then the father comes to the United States and becomes naturalized and that fact naturalizes his children. Those children are citizens by naturalization, such people as you speak of. A child

born after the father's naturalization is a native American; his citizenship is derived by right of birth under the terms of the Constitution. It says that children born abroad of American parents shall be deemed citizens of the United States.

Mr. HAYES. That is the statutory provision.

Mr. HUNT. Those children such as you speak of are eligible for the Presidency. If your child or my child was born while we were abroad he would be a native-born citizen.

Mr. HAYES. That is, a naturalized citizen could move back to the country from which he came and they would be native born, or at least they would be American citizens under the law now, and they could come back here and not only vote, but, as you suggest, probably be elected President.

Mr. WOOD. No evils have resulted from that, have they?

Mr. HAYES. My point is this: A man comes here and stays five years; he is naturalized; he returns, we will say, to Germany and spends the balance of his life there. His children born, if he is a naturalized American citizen, come here and at once they are citizens of the United States under the law as it exists to-day.

Mr. BENNET. I would like to ask a question on a part of the general bill—a matter of detail. You provide that the clerk shall send not only one of these certificates issued in triplicate, but a complete copy of the petition and all the records in all cases to the Bureau of Naturalization?

Mr. HUNT. Yes, sir.

Mr. BENNET. Do you not think that is a little unnecessary work?

Mr. HUNT. No, I do not think so; because the law also says that he shall send such papers as the Commissioner of Naturalization requires. You see, if you will allow me to digress, the main point of this bill—what we may call our discovery—is the petition of naturalization.

Heretofore there has been the declaration of intention made at any time, anywhere, without any previous inquiry, and we propose to abolish the declaration of intention and substitute for it a petition of naturalization made three months before the naturalization occurs and to be made in the same court in which the naturalization occurs, the petition to have all the salient facts set forth, not merely the *ex parte* statement of the applicant, but to have the facts he intends to prove before the court set forth in the petition. That petition will be made in duplicate and one copy is to be sent here to the Bureau of Naturalization.

Now, the Bureau of Naturalization, having this before it, knows that John Smith has applied for naturalization before such and such a court; that he will be examined for naturalization at such and such a time; that he came from such and such a place at such and such a time, and has resided at such and such places in the United States since coming here; so that the Government in Washington will be completely forearmed when John Smith comes before the court to be naturalized.

It will have time, even, to send abroad to find out whether the facts he states about his birth are true, and it can go into court then with full information to contest that naturalization if it chooses to do so; whereas now it gets no word of any naturalization at all, and under the previous bills looking to the reform of the naturalization laws it

has been provided that after the naturalization has been conferred the copies of the records and the report on it shall be sent to the Bureau of Naturalization. What is the use of that? It is too late. Now, if you get this petition, stating everything the man intends to show, three months before, then it is the Government's own fault if there are any frauds.

Mr. BENNET. But your bill provides that after the man is naturalized, then the clerk shall send a complete copy of the petition and the proceedings. Is he not obliged, then, to send the same thing twice, and is that not going to a whole lot of unnecessary trouble and furnishing a lot of unnecessary information?

Mr. HUNT. That may be; it might be better to say that he shall send such transcripts as the Bureau of Naturalization shall require.

Mr. BENNET. Another thing: Why do you abolish the declaration of intention?

Mr. HUNT. Because it means little or nothing, and a great deal of harm may come from it. Any man can walk from the dock to the court and make such a declaration, and then, in eight States of the Union, he can vote; he can qualify for homestead entry, and do a lot of things, and doing those things for many years he is apt to conclude that he is a citizen, and he may die under the impression that he was a citizen.

This paper, which does confer privileges upon him, is issued without any inquiry whatever. Then, another difficulty about it, which I think is an important one. The man with the declaration of intention may be obliged to go abroad, and then you do not know what to do with him. He has in a measure foresworn his original allegiance; he has not acquired the United States citizenship; and so he is an unfortunate being, a citizen of nowhere. I would keep him an alien until he becomes a citizen, not give him any halfway rights. It was not in the first bill, you see.

Mr. HAYES. I notice that you have provided in the bill here that the facts shall be sent to the Bureau of Naturalization, but you have not provided that it is the duty of anybody to investigate. Is that intentional or an oversight?

Mr. HUNT. No; it is provided that the Bureau of Naturalization shall be agents with power to go into any court.

Mr. HAYES. But it does not make it anybody's duty to do anything of that kind.

Mr. HUNT. It is the absolute duty of the Bureau of Naturalization.

Mr. HAYES. But it does not make it so by the terms of the bill.

Mr. WOOD. Do you not provide a solicitor?

Mr. HUNT. Yes; by the Bureau.

Mr. ADAMS. There is nothing in this bill that is mandatory; it is only permissible. It is intended to be a law body like every other such board.

Mr. HUNT. The superintendent of naturalization shall do these things.

Mr. ADAMS. It gives him the power, but where does it make it a duty?

Mr. HUNT. It gives him power and makes it his duty.

Mr. ADAMS. You know there are two kinds of law; there is a law that makes a thing permissible and there is a law that makes it mandatory.

Mr. HUNT. It is intended to make it mandatory.

Mr. BONYNGE. What is the matter with section 2, "That it shall be the duty of the superintendent of naturalization to prepare and furnish to the courts having power under this act a naturalized alien," etc.?

Mr. HAYES. It does not make it anybody's duty, then, to see that the law is obeyed?

Mr. WOOD. What is the matter with section 4 [reading]:

That the Secretary of Commerce and Labor shall appoint a person learned in the law as the law officer of the Bureau of Naturalization, who shall be paid an annual salary of \$4,000, and who shall perform such services as the superintendent of naturalization shall prescribe.

Mr. HAYES. But it does not make the superintendent of naturalization responsible for this law.

Mr. BENNET. Do you know approximately how many people are naturalized a year in the United States?

Mr. HUNT. The approximate number is 100,000—that is, 100,000 original naturalizations. How many that means with the children and women I do not know. There are no statistics giving those figures.

Mr. BENNET. How many people do you think it would take to make these naturalizations?

Mr. HUNT. You can see. I do not think anybody could approximately guess at a thing of that kind. I should suppose that if the Bureau of Naturalization was created, if it had five or six agents in five or six sections of the country where naturalization prevails, that that would be sufficient. At any rate, that would be a sufficient thing to start with.

Mr. BENNET. Instead of making this a new Bureau of Naturalization, do you not think it might save expense if you would consolidate it with the Bureau of Immigration, where all these facts are now, or at least many of the facts now are?

Mr. HUNT. I think there would be no objection to it, but it would not save anything, and it is a Bureau of equal importance. In fact, it would be hard to find any bureau under the Government that would have more important functions than the Bureau of Naturalization.

Mr. BURNETT. How about the records? Could they not be kept in one bureau then?

Mr. HUNT. The records could be kept in one bureau; yes. You see this formerly put it under the State Department, but now it is under the Department of Commerce and Labor.

Mr. BENNET. Every time an inquiry came into the Bureau of Naturalization they would have to write a letter to the Bureau of Immigration, if you had two separate bureaus?

Mr. HUNT. In many instances they would have to write to the State Department, too.

Mr. BENNET. Whereas if they were in one Department the information would be accessible?

Mr. HUNT. It would be a division still, and one division would be obliged to write to the other.

Mr. WOOD. It provides here that an applicant for citizenship shall make oath that he intends to permanently reside in the United States. Suppose he should make that oath and have that intention at the

time, but, as a matter of fact, reside indefinitely abroad. Would that nullify the certificate of citizenship?

Mr. HUNT. Yes.

Mr. WOOD. And at what time would that certificate be nullified? He goes abroad and resides and has not changed his mind definitely, but he is residing abroad. Under those circumstances would you say that his certificate would be nullified?

Mr. HUNT. It would be tantamount, of course, to his expatriating himself.

Mr. WOOD. It would not be if he went for an indefinite stay abroad. A naturalized citizen has a right to go abroad if he has the intention to return without affecting his citizenship.

Mr. HUNT. His residence abroad as long as it was not permanent might be indefinite. You see it is very hard ever to define what constitutes a permanent residence abroad. One man may be there in the representation of an American enterprise, another man may be there for his health, another man may be there for his education—an artist, for example—and any one of those men may live there indefinitely, and yet their residence is never really permanent, they intend to come back, and you can not make a hard and fast rule to say when a man should cease to be an American citizen. Of course it is a matter of *animus revertendi*.

We have nothing to prevent a man being naturalized and then taking a ship and going abroad and living there forever. The law now touches entirely his past, when he comes before the court; it makes no inquiry into his future or his intentions, and we have thousands who remain in the United States as aliens for years and just before they want to go home or to the old country, whether it is their home or not, they get themselves naturalized and take a ship and go, and as long as they stay there this certificate of naturalization protects them as American citizens. If they come before our consul or our minister, and he finds that they have lived there so long or have settled down there, he refuses to protect them. He does not say, "You are not a citizen of the United States." There is no way of saying that at present.

That is a totally different subject, but we propose that hereafter no man shall be naturalized until he swears positively that he intends to live in this country. It is one of the most important things in this law. You say you can not stop it; you can not tell that he is defrauding you. Well, you can not, but if he holds this paper in his hand which says that he intends to live permanently in the United States, and if thirty years afterwards he is found abroad without this paper, living permanently abroad, it is very easy to withdraw your protection from him; it puts the Government on firm ground in dealing with him.

Mr. ADAMS. I can say in this connection that most of the difficulties that the State Department has in eastern countries is on account of men who get naturalized here and then go back to their country and go into business and claim the protection of the United States when they get into difficulties.

STATEMENT OF MR. RICHARD P. MORLE, CLERK OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK.

Mr. MORLE. Section 33 has been so well gone over by Mr. Hunt that I do not think I will say anything on that. I have a citation here in my brief, which I will file with the committee, from 4 Peters, the case of *Spratt v. Spratt*, 393. I do not see from the decision of the Supreme Court how a legislative body can set aside a judicial court judgment. In their decision the Supreme Court say:

The various acts upon the subject of naturalization submit the decision on the right of aliens to admission as citizens to courts of record. They are to receive testimony, to compare it with the law, and to judge in both law and fact. The judgment, if entered in the record in legal form, closes all inquiry as to the testimony on which it has been pronounced, and, like every other judgment, is complete evidence of its own validity.

That provision of section 33 makes the clerk a judicial officer.

Mr. BONYNGE. You are opposed to the whole of section 33?

Mr. MORLE. Yes; it would be impossible for it to be done in the courts. I can not see how the court with the amount of business they have could possibly do this; it would be a matter of impossibility with them.

Mr. HAYES. You refer to the old certificates?

Mr. MORLE. Yes.

Mr. HAYES. Do you mean the new one?

Mr. MORLE. Oh, no, no, no.

Mr. BENNET. You are in favor of this uniform system, I suppose, that is suggested for the new certificates?

Mr. MORLE. Yes; and in fact what is proposed in this bill here, or is proposed by Mr. Waldo, was drawn under Judge Thomas's supervision, and it provides that each certificate shall have a stub; the certificate to be issued by the Bureau of Naturalization on safety paper and issued to the clerks on requisition, and the stubs to bear the physical description of the applicant, his name, and full information about him; the stubs on the certificates, both on the oath of intention and naturalization, to bear the physical description, and so on, giving the applicant's stature and full description of his physical appearance, including hair, eyes, nose, and so forth.

Mr. BONYNGE. What bill are you reading from?

Mr. MORLE. I am reading from the bill of Mr. Waldo, bill 10857. You will see it on page 30. There have been some amendments put on or some suggestions made since this was drawn.

Mr. WOOD. How did those provisions of Mr. Waldo's bill differ from the provisions in regard to the safety paper and in being made in triplicate, and so on, as proposed in this bill by the majority of the commission?

Mr. MORLE. It does not provide for the issuing of the certificates in triplicate, but that the stub should be sent to the Bureau with all this information, in which we give the physical description of the person naturalized, and I will give you that provision.

Mr. BONYNGE. Did I understand you to say that the bill of Mr. Waldo was prepared under the supervision of Judge Thomas?

Mr. MORLE. Judge Thomas. And each certificate bearing this stub should have all the information on it, and any spoiled stubs or destroyed stubs should be returned and accounted for and a heavy penalty put on the failure of the clerk to do that. Then, it provides for revenue for the Government, the revenue stamp to be placed on each certificate, and if the oath of intention still remains and is not abolished the certificate of intention will also bear the revenue stamp, and those certificates of intention, issued by the Bureau of Naturalization, will have the man's physical description, the date of his declaring his intention, and his original signature. So we say here [referring to brief]: .

The abolishing of the declaration of intention. The mere fact of an alien producing a declaration of intention made five years previous to his application for admission to citizenship is *prima facie* proof of his having arrived in the United States five years previous thereto.

If we have proof of this man's physical condition, and there is the date that he declared his intention, and his original intention, and that is on his certificate, because he must sign the certificate as well as the stub, and that stub is in the Department of Justice, they have the best evidence that can be produced of that man's intention.

Mr. BONYNGE. The Waldo bill provides for the retention of the declaration of intention.

Mr. MORLE. The holder; yes.

Mr. BONYNGE. But under the bill produced by the commissioners they abolish that altogether.

Mr. MORLE. Yes.

Mr. BONYNGE. And the Waldo retains that?

Mr. MORLE. Yes; with all this data on it, and the original signature of the declarer, and the stub and the certificate bear corresponding numbers. The Waldo bill provides for placing a \$2 revenue stamp on each certificate of declaration of intention and each certificate of naturalization. This would create a revenue of about \$800,000 for the Bureau of Naturalization. That would be ample to support the Bureau. There are 100,000 naturalized, which would mean every person after this that would be naturalized would have to declare his oath of intention, so that would be \$4; every one that was naturalized would have to pay \$4, and there are 100,000 naturalized.

Mr. BENNET. He would have to put a \$2 stamp on the declaration and a \$2 stamp on the stub.

Mr. BONYNGE. And then he goes through that same process again.

Mr. MORLE. Yes; and that would give us a revenue that would enable the Bureau to employ agents and give the Bureau of Naturalization a large force to be able to carry on its work. It is doubtful in my mind whether Congress can compel clerks of State courts to account for fees as clerks of State courts. You see in the bill for that purpose clerks of courts shall be deemed clerks of the courts of the United States. Under a decision of the Supreme Court, and some other decisions, it has been held that you can make them agents, but the moment you attempt to make a State court a United States court I think it is unconstitutional.

Mr. WOOD. Have you some of the decisions bearing on that point?

Mr. MORLE. I have a very able decision by Judge Thomas; in fact, he wrote it, but did not promulgate it. It was in a case arising—a

suit tried in the southern district for fraudulent naturalizations—for perjury committed in the State court. He spent some time on it and wrote quite a long opinion, but he finally decided it on some other point, and I do not know whether he would allow this—anyhow, I can give the reference. It was never promulgated; in fact, it was never rendered. He wrote it and he read some parts of it to me before I left.

Mr. WOOD. You do not know any cases directly in point?

Mr. MORLE. Not that I can give you now.

Mr. WOOD. You think there is doubt as to whether a State court could be made for certain purposes a United States court?

Mr. MORLE. I think so. Article 3, sections 1 and 2, of the Constitution provide that judges of the inferior courts of the United States shall hold their offices during good behavior, that such judges shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office, and that the judicial power shall extend to all cases in law and equity. How can Congress, therefore, convert a State court into a United States court, unless the judges thereof are nominated by the President and confirmed by the Senate, and hold office during good behavior?

Mr. WOOD. I want to ask you what, in your judgment, is the objection to the abolishing of the declaration of intention?

Mr. MORLE. I have said something about that in my brief [referring to brief].

If the applicant is to reside here five years, why not require him to declare his intention five years before his final admission and make said declaration of intention *prima facie* proof of his five years' residence? There is nothing gained by the oath of intention. To do so, the chief primary element in proving that the applicant arrived in the United States five years previous to his making his application is lost. The said oath of intention, containing his physical description and his original signature, being documentary, is the best evidence of the fact of such arrival.

You would have to provide further proof as to his residence in the United States since that time.

Mr. WOOD. There can be no doubt about that since January 1, 1900. There has been a bureau since then in which registry is made.

Mr. MORLE. That is true; but in Boston the records of the Bureau of Immigration have all been destroyed, and it is impossible to get it. And then there are constantly people coming from Canada and Newfoundland and from foreign countries bordering on our States here, and there is no record of their immigration. I came across with five men last summer; their baggage was examined, but we didn't see an immigration officer. No one knows where they come from.

Mr. BENNET. Did I understand you to say that the records of naturalization in New York and Boston have been burned?

Mr. MORLE. No; in Chicago. But at Ellis Island they were destroyed.

Mr. HAYES. A duplicate of those records since 1900 is here, is it not?

Mr. MORLE. Yes.

Mr. BONYNGE. Mr. Morle suggests that a great many people are coming in from Canada and, perhaps, from Mexico, coming across the border, and note is made of it by the immigration officers.

Mr. MORLE. You can not rely upon that immigration certificate.

Mr. CAMPBELL (one of the Commissioners of Naturalization). I

have been connected with the Bureau of Immigration ever since its organization, and we have a record of those who cross at their first crossing. We have those examined who came across on ferry boats, those who come across on trolley cars. We have an agreement with the transportation lines by which they refuse to furnish transportation until our office has passed upon the admissibility of people who want to come. So I do not think there is any difficulty about having a complete record of people who have come in here since 1900.

Mr. BENNET. Do you mean to say that when I go to a ticket office in Hamilton, Ontario, for instance, to buy a ticket to any place in the State of New York they will not sell me a ticket?

Mr. CAMPBELL. If they believe you to be an alien they will not, not until you have been inspected and passed by an immigration officer.

Mr. BENNET. Suppose I do not look like an alien, but still am one?

Mr. CAMPBELL. They take the trouble to find out. Our officers are reasonably expert in the matter. There is a manifest on the small steamers that shows the passengers, and on the trains our officers pass through and see whether there are any aliens on board.

Mr. BENNET. I know they do, but here is what they do: They stick their heads in the door of the car and call out, "Please open your valises." That is the customs officer.

Mr. MORLE. That is the customs officer.

Mr. CAMPBELL. Our officers very often find out from the conductors on the train.

Mr. MORLE. How would the conductor know who were aliens and who were not?

Mr. CAMPBELL. Of course I do not want to contest the point.

Mr. MORLE. There is a gentleman here who will testify about that.

Mr. CAMPBELL. I do not think that any alien, except under the most unusual conditions, comes in without inspection or without the knowledge of our officers in some way.

Mr. WALDO. I have been across the border a hundred times, and I do not believe but what I could bring in a hundred aliens to-morrow and nobody would know anything about it. I do not see how it is possible to know about it. You can not go on the train and say whether Mr. Burnett or I are natives or whether we were born in Canada.

Mr. CAMPBELL. I suppose if an officer went to ask a question he might reasonably be supposed to get a correct answer, and inquiry is uniformly made.

Mr. WALDO. It has never been made during the numerous times I have been back and forth.

Mr. CAMPBELL. Not made of you, perhaps, but made in some way, because our officers are instructed to get the information, and at the same time they are instructed not to make any unnecessary delay or give any offense.

Mr. WALDO. Admitting what you say is true, I say it is practicably impossible for your men to know whether there are aliens coming across the border or not.

Mr. CAMPBELL. Unless he asks somebody. I agree with you. I do not want to detain the committee by arguing this question. I simply want to call attention to the fact that whether the Bureau's records are absolutely accurate or not it has adopted a plan by which it be-

lieves it has the record of all aliens coming in here. It is a question, and some of the gentlemen here seem disposed to contest it. I only wanted to bring out the fact that we have a law for furnishing that kind of information that the Government wants.

Mr. BENNET. And if an alien comes in, no matter who he is, is that an evasion of the existing law?

Mr. CAMPBELL. Yes; and he is liable to be arrested and deported at any time, and we do constantly deport them. We have, among other things, the manifest, of course, of the Canadian Steamship Company.

Mr. BONYNGE. It is a very difficult matter to regulate. I have no doubt the Department is doing everything it can.

(Informal conversation between members of the committee followed.)

Mr. WOOD (addressing Mr. Morle). What further objections have you to the abolishing of the declaration?

Mr. MORLE. That is the only one, as to the proof. I think it is better than a certificate of identification. An alien coming here would have no objection to raise. If he came in contrary to law he could be deported. I question whether, if he was not asked if he was an alien, you could deport him under any immigration law; he has passed over the border, and because some one has not asked him he has come through. A friend of mine, Mr. Grinnage, on the 5th of July, the summer before last, passed through, and we went through together, and no one ever asked us. I did not know what the law was; I did not know that he had to say whether he was an alien or not. I did not see anyone that we could declare that fact to.

Mr. WOOD. If he appeared before the court and could not produce that certificate as to the time he entered, would not that be fatal to obtaining the papers?

Mr. MORLE. Yes.

Mr. WOOD. And therefore that is the protection to that extent, as to those who have come since 1900.

Mr. HAYES. Yes; he would be liable to arrest and deportation.

Mr. BONYNGE. That would guard it; that is the point that has been made, I believe.

Mr. WOOD. Here is the second section [reading]:

Second. At the time of filing his petition he shall file with the court a certificate from the Department of Commerce and Labor, if the petitioner arrived in the United States after January 1, 1900, stating the place and manner of his arrival in the United States, which certificate shall be attached to and made a part of the petition; but if he received no such certificate he may file parole evidence in lieu hereof.

That is an extract from a bill the draft of which was submitted by Mr. Hunt, as to which I made a motion a little while ago that it be reported as coming from this committee, in order that we may have all the bills before us for consideration and the selection of such points that may be proper. That is a question from the bill proposed by Mr. Hunt.

Mr. MORLE. The labor of making three certificates of naturalization, whereas the records of the Bureau of Naturalization could be fully protected by the data on the stub. Of those three certificates, one is kept at the clerk's office, one is sent to the Bureau of Naturalization. Now, you can imagine that in twenty years, with 100,000

persons naturalized a year, a duplicate copy of the petition, a duplicate copy of the certificate, a record of all the testimony taken in each case in twenty years—can you imagine what a vast amount of accumulation that would be? I have estimated here something like 20,000,000 copies in twenty years.

Mr. HAYES. Your point, then, is that a stub and two certificates would be sufficient?

Mr. HUNT. A stub and one certificate issued to the man. I am the only clerk, I think, that does it, but I require the applicant to sign his name the same as to a passport, and I put the volume number on his petition and the page number; I number every petition as it is taken with a numbering machine, and that certificate has the number of the volume and the number of the page and the original certificate. Now, if there is a stub attached to that, and that stub has the physical description of the man, the date, the different parts of the United States where he has resided, all that information on that certificate, that certificate is there with the Bureau and can be so classified under the State and in the courts of the States as to enable a ready reference, and it gives all the information at any time that they may want any records sent on; the Secretary of Commerce and Labor can direct any clerk to send the record there, and he can make rules and regulations—

Mr. HAYES. Their idea, then, would not provide for any notice of the certificate being sent to the Bureau of Naturalization, being made at the time and sent to the Bureau?

Mr. MORLE. No.

Mr. BENNET. I do not think Mr. Morle understands your question. He does, as I understand it, provide that one of these papers be sent to the Commission on Naturalization?

Mr. MORLE. No; only the stub. The stub is sent, with a physical description of the man.

Mr. HAYES. What record do you have in the court, then?

Mr. MORLE. I have his petition and all his testimony taken.

Mr. HAYES. Do you have a description of the applicant?

Mr. MORLE. It is on his papers.

Mr. HAYES. On your record?

Mr. MORLE. On my record; and his original signature and his petition.

Mr. WOOD. If the testimony were not transmitted to the Bureau of Naturalization, how would the officers of the Bureau have any reason to look into any particular case?

Mr. BONYNGE. But when the petition is filled they do send notice.

Mr. MORLE. No.

Mr. WOOD. Would not that be a vital omission, because they would be simply names with dates and so on, but there would be nothing in the papers transmitted from the naturalization court to the United States Bureau leading them to suspect that there should be certain cases looked into; whereas if the testimony was presented they could judge at once whether cases should be further considered and the United States Government interpose.

Mr. MORLE. We suggest here that the United States attorney should appear in these cases. For instance, you must give the court some confidence, you must place some confidence in it. There is a man to be examined, there is a petition filed, the court is to take that

testimony, it must be written out and the court must examine that testimony. You must have confidence enough in that court to think it is going to pass upon that fairly and honestly. You have a Bureau of Naturalization. A vast multitude of petitions have come in—take it during the year. In our district we do about how many? Between 3,000 and 4,000. In the southern district they do about 5,000 in the United States court alone. And then take the State courts, and in the State courts of Brooklyn, in Kings and Queens and Suffolk and Richmond, I suppose we could put down 3,000. And the courts of New York State, I suppose, well, say 5,000.

Now, you can imagine very well over the country this vast multitude of duplicate certificates coming in, what would the Bureau of Naturalization know? Now, gentlemen, with all respect to these people that may be there—they may have a lot of clerks, but one lawyer in the Department of Naturalization can not examine into all these things, it will be divided among the clerks. "I don't see anything there." It is for the court to pass upon that. It is a judicial act, and let the court pass upon those acts.

The Bureau of Naturalization have agents, and it is provided for that they shall have examiners and agents, and there is money enough provided for them, that they can send and examine into any court and examine the records from month to month, and the clerks must make a report to them every month, every thirty days—at the end of every month, within fifteen days after the end of the month—that the clerk shall report to them the persons naturalized, the names, the nativity, where they were born, where they have been residing, whatever localities they have resided in, and they have all those facts every month, and we provide that thirty days shall elapse instead of ninety. What is the good of ninety days? As the judge said yesterday, in talking with me about this matter, he could not see why it was ninety days that should elapse from the filing of the petition to the court considering the fact.

Mr. BONYNGE. That is in order to enable the agents of the Bureau of Naturalization to make an investigation, so that they can present to the court any objections that may exist to the naturalization of a party.

Mr. MORLE. Well, say, if you can just imagine the number of men in the Bureau of Naturalization it would take to examine every duplicate that was made in New York City, the Greater New York, which is about, as I say, 20,000 or 25,000 a year—say, 20,000 a year—if you could imagine, now, the force that it would take to examine them—

Mr. BONYNGE. I suppose the vast majority of those would not require much examination.

Mr. MORLE. How would they know that?

Mr. BONYNGE. Just an ordinary examination of the papers.

Mr. MORLE. How would they know that John Smith did not need any more examination than John Jones?

Mr. WOOD. If the testimony were transmitted—

Mr. MORLE. The testimony is not taken until ninety days. They provide that ninety days shall elapse, ninety days must elapse, before the hearing before the court.

Mr. BONYNGE. But his petition is on file with the facts as he sets

them forth. Now, that petition comes to the Bureau. They compare that with the information they have at the Bureau. If there is any discrepancy, it causes them to make an investigation and gives them ample time to do it. If when that petition reaches the Bureau the facts as are set forth agree with the data in the Bureau of Naturalization, there is not occasion perhaps for investigation, and it goes along in its regular course.

Mr. MORLE. Another thing: Do you think it is possible for the clerks of State courts or United States courts to be able to perform all those duties in making double certificates? In their bill they have not provided a form at all——

Mr. HAYES. It is provided that the superintendent of naturalization shall furnish such form.

Mr. MORLE. That is a mistake, entirely, I think; neither the court nor the Bureau should have power to make forms. Congress should do it, as they have done in the case of bankruptcy, because the freak of a court, the freak of a bureau, will result in different forms. They will not be uniform. One gentleman will go out of the Bureau and another one will come in. One will say: "I think I will do that," and another, "I think I will do that," and the forms will constantly change. Let Congress make the form the same as they do in bankruptcy. Then Congress should have uniform laws in naturalization, and none other should be used.

Mr. WOOD. I see the form for the certificate is given here on page 20 of the bill of the majority.

Mr. MORLE. Yes; and I see they have some forms with my name signed. If it passed in that way I would have to sign all the certificates. If you will look on page 21 you will find one certificate there with my name in it.

Mr. WOOD. The form of the certificate is provided for by this bill?

Mr. MORLE. But I am speaking of the other form.

Mr. BONYNGE. Are there any other objections to the bill as presented?

Mr. MORLE. If you will hear Mr. Randolph, I would be glad.

Mr. BONYNGE. Let me see if I understand the objections you make, first. You object to section 33?

Mr. MORLE. Yes, sir.

Mr. BONYNGE. As being improper and a physical impossibility to carry into operation; that is your objection to that, is it not?

Mr. MORLE. Yes, sir.

Mr. BONYNGE. Do you object to the section in regard to the naturalization of minors—section 16?

Mr. MORLE. No; not at all. I think the old law should remain.

Mr. BONYNGE. Then you object to section 16 as it is framed in the bill?

Mr. MORLE. Framed in the bill?

Mr. BONYNGE. Submitted by the majority of the commission.

Mr. MORLE. Then I think that one point I have not brought out, which I attempted to but forgot at the time, is the oath of intention. In this bill it is provided, here is a person at the age of 16 can apply for a guardian. This provides to allow a child at the age of 16 to declare his intention.

Mr. BONYNGE. I want to summarize your objections. You object to the doing away with the declaration of intention?

Mr. MORLE. Yes, sir.

Mr. BONYNGE. You have given your reasons for that?

Mr. MORLE. Yes, sir.

Mr. BONYNGE. You object to the provision that requires ninety days to elapse between the filing of the petition and the naturalization of the alien?

Mr. MORLE. Yes, sir; and because there are no forms provided.

Mr. BONYNGE. And you object to requiring clerks of the court to send complete transcript in each case?

Mr. MORLE. Yes. And then another thing. This bill provides that this testimony should be taken before the court. Now, Judge Thomas has written a letter—

Mr. BENNET. I have that letter, and I am going to ask that it be made a part of the record.

Mr. MORLE (continuing) as to taking testimony. It would be impossible for any one judge to give his attention alone to hear all the testimony in the court, and this bill has provided that the courts of naturalization should be construed as courts of equity, and that the rules of the Supreme Court in equity cases govern. In that way the court can refer any case, any matter, to an examiner to take all the testimony. The examiner just certifies and makes report and certifies it to the court, and then the court has the testimony before it that it can examine; but if it has got to examine every witness and applicant it is impossible. The courts will just have to shut up. Judge Thomas has sent a letter here on that.

Mr. BENNET. Here is the letter:

BROOKLYN, N. Y., January 20, 1906.

MY DEAR SIR: In House bill 9964, introduced by Mr. Howell, I find the following:

"SEC. 20. That every final hearing upon such petition shall be had in open court before a judge or judges thereof, and every final order which may be issued upon such petition shall be under the hand and seal of the court and entered in full upon its records, and upon such final hearing of such petition the applicant and witnesses shall be examined under oath before the court and in the presence of the court."

If such section means that the judge of the court himself shall hear the evidence of the applicant and witnesses, as contradistinguished from referring the matter to a master to take their evidence and report, I desire to say that it is impossible of useful execution. In this and the southern districts the matter is sent to a master, called a "commissioner," who makes a careful examination of the applicant and witnesses. It is not a formality, but a substantial trial for the ascertainment of certain facts demanded by the statute.

You will observe that the duty of the master in such a case is to ascertain repeatedly the presence of certain fixed facts, and that it is a matter that can be done quite as well by an intelligent master as by the judge himself, and if time be taken into consideration, it can be done much more thoroughly and carefully. In this respect the reference differs from that where the master is to determine ever-changing facts, from a great variety of evidence. But beyond this, is it not apparent that no judge could perform the duty, and if he attempted it, would it not result in the old-time brief and perfunctory questioning that has brought matters of naturalization into such disrepute? In this district there were last year 7,481 applications, and in 1904, 10,258.

Now, consider that the master must examine not only the applicant, but the witness, and in some instances more than one witness, and in addition documents bearing upon the matter, and you will have some conception of the work that this provision seems intended to place upon the judge. In addition, it seems the policy in cities of over 100,000 inhabitants to bring all naturalizations into the Federal court. All applicants would necessarily come to this court or that in the southern district of New York, and it is unnecessary to more than

suggest what the result would be. I believe that with the proper bill the system that now obtains in this district and in the southern district of New York is altogether the best that can be devised. Of course, the fidelity and intelligence of the master is a fundamental necessity, and in that regard I believe that these two districts have reached the point of highest efficiency.

I would be glad to have you and the committee examine the rules which I have laid down in this district, and also the rules which obtain in the southern district, and I desire to call your attention to the monthly reports that are made to me by the commissioner, so that I am kept informed of the trend of business.

Major Morle, the clerk of this court, and Mr. Randall, the commissioner, will, upon the hearing, by brief and discussion, emphasize these thoughts and present others that are pertinent to this and other questions.

Yours, respectfully,

EDWARD B. THOMAS.

The Hon. GEORGE E. WALDO,
Washington, D. C.

I entirely concur in the above letter.

GEORGE C. HOLT,
U. S. District Judge, Southern District of New York.

[Inclosure.]

During the year 1906 Judge Thomas expects to hold terms of court as follows:

January 3-9 (1 week) circuit court, E. D., criminal.
10-23 (2 weeks) circuit court, S. D., criminal.
24-31 (1 week) circuit court, E. D., equity.
February 1-March 13 (6 weeks) circuit court, E. D., common law.
March 14-30 (2 weeks) circuit court, S. D., criminal.
April 2-20 (3 weeks) district court, E. D., admiralty.
April 23-May 8 (3 weeks) circuit court, E. D., common law.
May 9-31 (3 weeks) circuit court, S. D., criminal.
June 6-12 (1 week) circuit court, E. D., criminal.
20-30 (2 weeks) circuit court (jail cases), S. D., criminal.
October 3-9 (1 week) circuit court, E. D., criminal.
10-31 (3 weeks) circuit court, S. D., criminal.
November 7-20 (2 weeks) circuit court, E. D., common law.
21-December 11 (3 weeks) district court, E. D., admiralty.
December 12-31 (3 weeks) circuit court, S. D., criminal.

Motions in the circuit and district courts will be heard on Fridays at 3 p. m. unless otherwise ordered. Hearings in equity cases arising from bankruptcy proceedings will be heard during the periods assigned for equity cases in the circuit court.

Mr. WOOD. I would like to hear your views as to the provisions excluding minor foreign-born children from naturalization by virtue of the naturalization of their parents.

Mr. MORLE. I think the domicile of the child should follow the domicile of the parent, as we have it now and as the law has been in the United States since the time we have had Congress.

Mr. WOOD. Do you think there is more objection to the results that come from providing such a provision as that, excluding children between 16 and 21 who are born of naturalized parents, than would result by allowing the present law to stand?

Mr. MORLE. This bill provides that where they came in under the age of 16—not beyond 16—this bill of Mr. Waldo provides that where they arrive in the United States under the age of 16 they must be naturalized, but after arriving at the age of 16 and arriving in the United States—that is, if their father has been naturalized before they arrive at the age of 16, but if their father is not naturalized until they arrive at the age of 17, that child must declare his intention.

Mr. HAYES. Your idea, then, agrees with the idea of the majority of this commission, that children under 16 should be naturalized by the naturalization of their father?

Mr. MORLE. Yes.

Mr. HAYES. But if they are over 16—

Mr. MORLE (interrupting). I will tell you why that is: Because this bill provides from 16 they can declare their intention—

Mr. WOOD. You object to this intention?

Mr. MORLE. Because we were very careful in drawing that provision. Can you put your hand upon that section here?

Mr. ELLERBE. I would like to ask Mr. Hunt what eight States there are in the Union where a man can vote on a declaration of intention?

Mr. HUNT. The list is given in our report. The States are Arkansas, Indiana, Kansas, Michigan, Missouri, Nebraska, Oregon, and Wisconsin.

Mr. HAYES. Before we adjourn I want to ask one more question. You object to the provision in this bill unless the declaration of his intention is retained. I want to know why you object—what are your grounds?

Mr. HUNT. Because between 16 and 21 where is the child?

Mr. HAYES. Where is he under your arrangement?

Mr. HUNT. Under 16 he is a citizen.

Mr. HAYES. Over 16 where is he?

Mr. HUNT. Suppose he declares his intention.

Mr. HAYES. Suppose he does not.

Mr. HUNT. It is his own fault.

Mr. ADAMS. This is rather in conflict with the general international law. In France and some other countries a foreign-born child can become a citizen, but he can not do it until he becomes of age, and then he can elect either to follow his father's citizenship or become a citizen of the country where he lives; and this would be a special law which would rather be in conflict with the uniform law on the subject among the different nations.

STATEMENT OF MR. ROBERT F. RANDALL.

Mr. Chairman, I am of the opinion that every person naturalized should be required to be able to speak the English language, and, in addition, should be able either to read the English language or to read his native language. I dissent from the report of the Commission in regard to a certificate of immigration. As will be shown by the documents on file in this committee, the immigration records in the port of New York up to and prior to June, 1897, have been totally destroyed by fire. What is to prevent an unscrupulous alien from alleging and from bringing witnesses in any number, equally unscrupulous with himself, to swear to the fact that he arrived in the United States prior to June, 1897? He can do this without fear of detection, for there are no immigration records which could prove the contrary.

Mr. MORLE. I will file this as part of my remarks.

BRIEF ON H. R. 9964 AND COMPARISON OF SAME WITH H. R. 10857.

There are several objectionable features in House bill 9964, presented by Mr. Howell, of New Jersey.

First. The abolishing of the declaration of intention. The mere fact of an alien producing a declaration of intention made five years previous to his application for admission to citizenship is *prima facie* proof of his having arrived in the United States five years previous thereto; to be sure, his residence within the United States during the five years must be proven by oral testimony. A provision for the declaration of intention would eliminate, in a very great degree, all opportunity for perjury.

If the applicant is to reside here five years, why not require him to declare his intention five years before his final admission and make said declaration of intention *prima facie* proof of his five-year residence? There is nothing gained by abolishing the oath of intention. To do so the chief primary element in proving that the applicant arrived in the United States five years previous to his making his application is lost. The said oath of intention, containing his physical description and original signature, being documentary, is the best evidence of the fact of such arrival.

Section 2167, Revised Statutes of the United States, admitting minor residents to citizenship without a declaration of intention, should be repealed, and all minor aliens should be allowed to declare their intention at or after the age of 16, as provided for in H. R. 10857, introduced by Mr. Waldo.

Second. Section 33 of H. R. 9964 provides that the certificates issued to persons naturalized previous to the date of its passage shall be duly registered by a clerk of a court of naturalization.

The holder of such certificate must appear personally before such clerk and present such certificate, and the clerk shall register the same if it appear to be valid upon its face, provided that he has no good reason to believe that such certificate was obtained fraudulently or illegally. This delegates judicial power to the clerk. H. R. 9964 goes on to provide that no certificate shall be registered after the 1st of January, 1911, and that no certificate issued prior to the taking effect of the act shall be accepted or considered as evidence of citizenship of the person holding, offering, or presenting the same at any Congressional or Presidential election or in any court of the United States or by any officer of the United States until such certificate has been duly registered.

CITATION.

The various acts upon the subject of naturalization submit the decision on the right of aliens to admission as citizens to courts of record. They are to receive testimony, to compare it with the law, and to judge in both law and fact. The judgment, if entered in the record in legal form, closes all inquiry as to the testimony on which it has been pronounced, and, like every other judgment, is complete evidence of its own validity. (*Spratt v. Spratt*, 4 Pet. (U. S.) 393.)

Further argument is scarcely needed to show the impracticability of this provision. The committee is referred to the learned and able minority report of Commissioner Hunt upon this point.

Third. H. R. 9964 provides that the clerks of courts of naturalization shall have authority to retain one-half of the fees received by them and account for the remainder in quarterly accounts to the Superintendent of Naturalization, to be made within thirty days after the close of each quarter.

I can not see how Congress can compel clerks of State courts to account for fees received by them for services rendered as such clerks. The bill introduced by Mr. Waldo (H. R. 10857) provides for placing on each certificate of declaration of intention and certificate of naturalization a two-dollar revenue stamp. This would create a revenue of about \$800,000 a year for the Bureau of Naturalization, which would be ample. Clerks of United States courts, under Mr. Waldo's bill, are authorized to retain \$3,000 a year from the fees received by them, from which they must pay all additional clerk hire and expenses of printing forms other than certificates of intention and certificates of naturalization.

Fourth. H. R. 9964 also provides, in section 7, that the State courts, when exercising jurisdiction in naturalization cases, shall be deemed to be courts of the United States; and that all judges, justices, clerks, and officers of such courts, when acting in naturalization matters, shall be deemed to be officers and agents of the United States. This is contrary to Article III, sections 1 and 2, of the United States Constitution, which provides that judges of the inferior courts of the United States shall hold their offices during good behavior; that such judges shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office, and that the judicial power shall extend to all cases in law and equity.

How can Congress constitutionally convert a State court into a United States court unless the judges thereof are nominated by the President and confirmed by the Senate, to hold office during good behavior? Under the decisions, State courts can be made agents for naturalizing aliens, but can not be created United States courts.

Fifth. The bill does not provide for uniform forms to be used in the several courts as is provided for in the bankruptcy act of 1898. Forms in naturalization proceedings should not be left to the discretion of either executive officers or judges of the several courts. Congress should provide a form adapted to every condition that may arise. Such forms are provided for in the bill introduced by Mr. Waldo.

Sixth. The bill provides for the issuance of certificates in triplicate, one delivered to the applicant, one filed in the court, and the third forwarded to the Bureau of Naturalization. If this is done, and petitions are filed in the Bureau of Naturalization in compliance with H. R. 9964, such Bureau would have, in every twenty years, 6,000,000 copies of records. Mr. Waldo's bill provides that the Bureau of Naturalization shall issue certificates to the clerks of designated courts, with stubs attached to such certificates.

Such stubs will give the age, date of oath of intention, date of filing petition to be admitted, length of residence in the United States, localities in which the applicant has resided during his residence in the United States, and the original signature and physical description of such applicant. These stubs can be classified by the Bureau

under the head of the courts in the various States, and can be easily referred to for all information and data.

Section IX.—There is no objection to this. But can its provisions be complied with unless the force of each United States attorney's office is increased tenfold? Will it not create a great expenditure?

Section X.—If this is to remain, the same right of appeal should be granted to the petitioner.

Section XIV.—Aliens who have served in the United States Army, Navy, or Marine Corps, and who have been honorably discharged from the same, should be admitted to citizenship without previous declaration of intention.

Page 10 (lines 13–17). This does not cure the existing anomaly, i. e., that a soldier or marine need only serve a term of enlistment to secure naturalization, while a sailor must serve five years in the United States Navy for a like end. (Rev. Stat. U. S., sec. 2166, ch. 165, Stat. L. U. S., 1894.)

Same section and page (lines 20–22). “And shall have a reasonable understanding of the duties and responsibilities of American citizenship.” This is vague and indefinite. Under this provision the qualifications required by the several courts would be wide apart as the poles. Mr. Waldo's bill (H. R. 10867, sec. 9, p. 8, lines 1–10) covers this point much more satisfactorily.

Same section (lines 22–25). Covered by H. R. 10857, section 5, page 4, line 20, in simpler language.

Same section and page (line 25), page 11, line 4. This is too stringent. It is extremely doubtful whether any naturalization bill should require more than an ability to speak English.

Same section, page 11 (lines 4–6). This provision would undoubtedly be read into any naturalization law by the courts, so that its insertion or omission does not matter materially.

Same section, page 11 (lines 1–4). This provides that all aliens admitted as citizens of the United States must write their own language, or the English language, and read, speak, and understand the English language. To require every alien admitted to read and understand the English language would be to demand too much of the foreign element which comes to our shores. We are strongly in favor of the proposition that every alien admitted shall be required to speak English.

Section XV.—Page 11 (lines 22–24). This leaves an avenue for fraud. An unscrupulous petitioner might, with small fear of detection, naturalize numerous persons bearing his surname simply by naming them in his petition as his children.

Page 12 (lines 8–9). Under this provision the court must inquire judicially into a mental purpose—a state of mind which family or financial conditions may at any moment alter—and must make a finding of fact thereon. The bill provides for no inquisition relative to any tangible conditions for the purpose of evidencing this qualification. Ninety-nine per cent of the inhabitants of the United States solemnly intend to become wealthy; but how many carry out that intention?

The Naturalization Commission gives as its reason for this provision that, in the event of its passage, the United States will not be obliged to protect naturalized citizens residing permanently abroad. Would

not an amendment to section 2000, Revised Statutes of the United States, providing that no naturalized citizen should receive protection from the United States while domiciled abroad, far more simply and effectually serve this purpose?

Same section and page (lines 10-15). This would debar large numbers of aliens from ever becoming citizens, for the reason that no record has been made, is made, or ever will be made of Canadians, Newfoundlanders, Mexicans, Central Americans, and South Americans coming to this country overland. Moreover, rich opportunity for fraud would be afforded, as what unscrupulous alien would fail to declare that he arrived in the United States previous to January 1, 1900, or, let us say, previous to June, 1897. As the immigration records of the port of New York up to and including June, 1897, have been entirely destroyed by fire, such alien would be safe in the latter assertion.

The other provisions of this section are covered by Mr. Waldo's bill.

Section XVI.—Covered by H. R. 10857, section 18.

Section XVII.—Foot of page 13 and page 14 (lines 1-2). "And that he is in every way qualified, in their opinion, to be admitted as a citizen of the United States under the naturalization laws." This makes the witness a judge and an expert witness rolled into one. Under this provision the witnesses are required to swear that it is the petitioner's intention permanently to reside in the United States. How can a witness be prosecuted for perjury under this provision?

Same section, page 14 (lines 3-12). This is a good provision and should be adopted.

The other provisions of this section are covered by H. R. 10857, section 7.

Section XVIII.—The practical effect of this section, which has been followed in various State and Federal courts, amounts to nothing. The lists herein prescribed are posted up on a bulletin board, together with notices of sales, foreclosures, and the like, where no one reads or notices them.

Same section, page 15 (lines 2-6). Why cumber the proceedings and add expense to the petitioner by compelling him to subpoena witnesses when he stands ready voluntarily to produce them, or can be required by the court to produce them?

Section XIX.—The period of ninety days herein prescribed is too long. H. R. 10857, section 8, page 6 (lines 10-12), makes the period thirty days, which is long enough. Does the Congressional election herein mentioned include an election for a United States Senator, who is elected indirectly by the citizens of a State? The main features of this section are covered by H. R. 10857, section 8.

Section XX.—Unless the courts are given the power to refer the taking of testimony to a United States commissioner, or to an examiner, the examination of the petitioner and witnesses would, in cities over 1,000, compel the Federal courts to devote its entire time and attention to naturalization cases, to the exclusion of all other business. In the cities of New York, Boston, Chicago, Philadelphia, San Francisco, etc., over 10,000 aliens are naturalized each year in the State and Federal courts. How could the courts in those cities hear the testimony of all petitioners and their witnesses in one year?

Why not take such testimony by examiners appointed by the court in like manner as testimony in equity causes is now taken? The United States courts in large cities are now so crowded with business that at every session of Congress bills for additional judges are introduced. In the State of New York the present legislature is asked largely to increase the number of judges of the State courts.

Who is to pay the stenographers' fees in United States courts on the hearing and examination provided for by this section? Certainly not the Government; yet section 29 (post) declares it a crime for the clerk or any other person to charge or collect any fees not specified in this act. The act should fix the fees to be paid by the petitioner to the examiner and stenographer for taking testimony. The clerk should not be compelled to take the testimony, for the clerk, in the cities above mentioned and in other large cities, requires his whole time properly and efficiently to attend to the duties of his office.

The other portions of this section are covered by Mr. Waldo's bill, section 8.

Section XXI.—Covered briefly and simply by the term "alien friend," used in Mr. Waldo's bill, section 5, page 4, line 3.

Section XXII.—Page 16, line 15: Why "substantially?" Does not the use of this word leave a margin for a multitude of differing forms by different officers and courts, so long as such forms contain the substance of the oath prescribed by this section?

Section XXIII.—Page 18, lines 13-23. Why cause the trouble and expense of subpoenaing witnesses on the petitioner's behalf, when, in practice, he always produces such witnesses voluntarily? The report of the Naturalization Commission says (p. 25):

The fees should be uniform throughout the United States, so that all aliens applying for citizenship shall be subject to the same expense.

The fee of a witness in a United States court is \$1.50. The fee of a witness in a court of record in New York State is 50 cents. Witness fees in the several States differ widely in amount, as do the clerk's fees for issuing subpoenas. In New York State, for example, there are no clerk's fees upon the issuing of a subpoena, as subpoenas are issued by attorneys. How, then, are all aliens to be subject to the same expense throughout the country under this section?

Section XXIV.—Page 19, line 23. "Substantially." See remarks on use of the word in Section XXII. Why make triplicate certificates? Does not the stub provided for by Mr. Waldo's bill cover the ground in a more expeditious and less cumbrous form?

Section XXV.—This is a good and necessary provision.

Section XXVI.—This is a good and necessary provision. It is preferable to the provision to the same effect in Section XXI of Mr. Waldo's bill.

Section XXVII.—This is covered, in better phraseology, by the amendment proposed to Mr. Waldo's bill.

Section XXVIII.—In so far as this relates to clerks of United States courts, it is covered by existing law. It has already been submitted that Congress has no power to compel clerks of State courts to turn over fees received by them.

Section XXIX.—See remarks under Section XX. How can the depositions provided for by Section XVII, page 14, line 9, be taken

with this section standing in the way? This section would make it a misdemeanor for an attorney to collect a fee from a client in a naturalization case.

*Section XXX.—*This is a good and necessary provision.

*Section XXXI.—*This is a good and necessary provision.

*Section XXXII.—*Page 25 (line 25, and page 26, lines 1-4). Unnecessary, as it is elementary that a penal statute is never construed to be retrospective, or, rather, can not be ex post facto. The remainder of this section is covered by H. R. 10857, section 27.

*Section XXXIII.—*Covered by the second objection of this brief and by Commissioner Hunt's minority report.

*Section XXXIV.—*Covered by Section XVI of Mr. Waldo's bill. Is it not a radical encroachment upon the judicial power to provide that one court shall have power to cancel or annul a judgment entered by another court of coordinate jurisdiction, e. g., that the State or Federal court of one State can cancel or annul a judgment entered by a court in another State? An order or decree granting naturalization is a judgment. (*Spratt v. Spratt*, 4 Pet. (U. S.), 393.) Moreover, is this provision constitutional? The United States Constitution provides (Art. IV, sec. 1):

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State.

*Section XXXV.—*Covered by Section XXII of Mr. Waldo's bill.

*Section XXXVI.—*Covered by Section XXIX of Mr. Waldo's bill.

*Section XXXVII.—*At least ninety days should be allowed for preparation and distribution of forms, etc., under an act of this nature.

REMARKS IN GENERAL.

Naturalization legislation should, under existing conditions, be framed so as to prevent fraud. But it should not be framed so as to place unnecessarily harrassing and vexatious conditions upon the 95 per cent or more of honest aliens who come to our shores, who are needed in our agricultural and newly settled districts, who honestly apply for citizenship papers, and who are honestly entitled to receive them. These aliens should be encouraged and not hindered in that aim.

It is submitted that an examination of the bill proposed by the Naturalization Commission will show the same to be cumbrous, complicated, and in many parts unconstitutional.

The Commission proposes that the present declaration of intention be abolished. See the first objection in this brief and the suggestions on the naturalization bill offered by Mr. Waldo. One argument by which the Commission supports such abolition is that the declaration of intention is "peculiar to American law." This may be dismissed with small comment, as this Government is peculiar and apart from all other governments, and as many statutes peculiar to America are not the less desirable for that reason. The Commission says further (Report, p. 16): "One who has made the declaration is really in the distressing position of having no allegiance and no government to look to for protection in case of need." It is difficult to see from what treaty, statute, or decision of a court the Commission gathered this novel information.

The Commission states that a declarant "has the extraordinary privilege of voting * * * in nine States." This would seem to be a matter for the consideration or correction not of the United States, but of those States.

The report inveighs against declarations of intention as being "impulsive, * * * hastily formed, * * * fleeting." As this statement is a mere matter of opinion on the part of the Commission, and as the Commission offers no evidence to support it, it may be dismissed with slight comment.

On pages 17-18 of the report it is urged that the petition should be made ninety days before hearing, so as to give opportunity for investigation. This seems to imply domiciliary visits and the like. It is difficult to conceive why the 95 per cent or more of aliens who seek naturalization, to which they are in every respect lawfully entitled, should be subjected to "shadowing" and police investigation like accused or suspected criminals.

The report goes on to say (p. 18) that "since January 1, 1900, the Bureau of Immigration has had a record of every alien lawfully admitted to the United States." This is extremely doubtful.

H. R. 9964 does not provide for the naturalization of United States soldiers, sailors, and marines free of all cost (see H. R. 10857, Sec. XX). It does not provide for a standard by which a uniform practice shall be had throughout the United States (see H. R. 10857, Sec. XVII). It does not provide that pending naturalization proceedings shall not be abated (see H. R. 10857, Sec. XXV). It fails to prescribe for an examination of the petitioner touching his knowledge of the Constitution (see H. R. 10857, Sec. IX, p. 8, lines 1-10). It does not prescribe a sufficiently full physical description (see H. R. 10857, Sec. XXXI, p. 30, Form 7).

COMMITTEE ON IMMIGRATION AND NATURALIZATION,
HOUSE OF REPRESENTATIVES.
Tuesday, January 30, 1906.

The committee met at 10.30 o'clock a. m., Hon. Benjamin F. Howell (chairman) in the chair.

The CHAIRMAN. We will hear Mr. Campbell, of the Department, this morning.

STATEMENT OF MR. RICHARD K. CAMPBELL, OF THE DEPARTMENT OF COMMERCE AND LABOR.

MR. CAMPBELL. I will be very glad to answer any questions that the committee want to ask me. I do not know that I have anything to address them upon beyond offering the report of the Commission.

The CHAIRMAN. If any of the gentlemen of the committee desire to ask any questions, they may do so.

MR. BENNET. You disagree with Mr. Hunt on a couple of subjects, or rather Mr. Hunt disagrees with the majority of the Commission?

MR. CAMPBELL. Mr. Hunt disagrees with the majority.

MR. BENNET. Is there anything you wish to add to your printed report in regard to that?

Mr. CAMPBELL. You mean specifically with regard to the points of difference?

Mr. BENNET. Yes.

Mr. CAMPBELL. I do not know that there is very much that I can add to what we have said. I can add something, if the committee desires it, on that subject.

The first material point on which the committee differs is the necessity for registration of certificates of naturalization under the existing law, and the second was as to the status of children of naturalized aliens born abroad. I think the majority of the committee states its position rather fully upon both those points. On the second point there is a division between the majority of the committee. It seemed to me that the argument urged by the majority as a reason for reversing the present situation of the law in regard to the effect of naturalization upon resident foreign-born children of naturalized aliens required that all such children should be called upon to prove their eligibility for citizenship. From my point of view it seemed a very insufficient, a very partial remedy of the existing evils to draw the line at 16 years of age.

The committee was engaged in establishing different qualifications to make an alien eligible to citizenship to those which have heretofore prevailed; and to those who have gone into the subject with great care it looked as though it was a very partial performance of its duties to make exacting standards for the parents, and then allow the minor children, whether fit or not, to become naturalized without any opportunity on the part of this Government to see whether they were qualified, morally or mentally, or in any other respect. It almost looked as if the Government, in its determination to have them naturalized, brought them in whether they would or no. Of course that does not ignore the fact that any such child on reaching his majority would have a perfect right to elect his citizenship.

Mr. BENNET. Under the existing law he in a way does not have the right to elect.

Mr. CAMPBELL. He has this right to elect, that he can return to a foreign country and, of course, become naturalized under the laws of that country by complying with the conditions.

Mr. BENNET. Yes; but if he stays here he is deemed to acquiesce.

Mr. CAMPBELL. Yes, sir; he is deemed to acquiesce if he stays here.

Mr. HAYES. Is it not true that if he goes to a foreign country he does not lose his status as an American citizen?

Mr. CAMPBELL. Not at all.

Mr. HAYES. Even if he was naturalized, there is nothing in our law to prevent him?

Mr. CAMPBELL. Yes, sir; if he stays indefinitely. Under existing law, as well as under this bill, if he goes abroad and stays indefinitely, it would deprive him of any right of citizenship.

Mr. BENNET. Would it not be well to have some provision for the expatriation after a certain residence abroad?

Mr. CAMPBELL. That was considered by the committee, and there was some objection to it. The most potent objection was that after a man had foresworn his allegiance to the country of his birth, if we were to undertake to deprive him of that citizenship, he would be divested of any allegiance to any country and of any claim on any

country for his protection, and the Commission left the matter in the status in which it is on that account.

Mr. BENNET. It has been suggested that they put this work under the charge of the Commissioner of Immigration, and change his title to that of "Commissioner of Immigration and Naturalization." What would you say as to that, from your standpoint?

Mr. CAMPBELL. I could not answer for the Department. I would say that originally I favored that plan. Some very strong reasons were urged with the Commission when the matter was under consideration which rather led me to reverse my views.

The Bureau of Immigration is one having a very large service and a large scope of duties; one that undoubtedly requires the close and constant attention of its chief, and it seemed to the Commission that this question was one of even more importance and one that was large enough to justify the appointment of a chief who could give it his exclusive attention and not divide it with some other interest, like Chinese exclusion and immigration; and for that reason the recommendation was made by the Commission that a separate bureau be established.

Mr. BENNET. The main records of this new bureau are in the present Bureau of Immigration, are they not?

Mr. CAMPBELL. No, sir. The fact in regard to that is that the records giving the dates of arrival of aliens in this country, which are the only records we require from the Bureau of Immigration, are at the port of entry, and this bill provides that a certificate shall be furnished as to the date of arrival of any petitioner by the Department, through correspondence with the ports of Boston or of New York or whatever port the aliens may have arrived through. I do not know that it would facilitate matters at all for that work to be done through the Bureau of Immigration, because, in any event, the correspondence would have to be conducted between the Department and the port of arrival.

Mr. BENNET. It would save one letter. If you establish the new bureau, the new bureau will have to write to the Bureau of Immigration and the Bureau of Immigration will have to write to the port of arrival.

Mr. CAMPBELL. No, sir. It is required that that inquiry shall be made by the Commissioner of Commerce and Labor. The process would be for the petitioner to communicate with the Secretary, and in his office this letter would be prepared, addressed to the port of arrival, to verify this man. Of course that verification would be binding upon the Bureau of Naturalization when it was presented with the petition. Under the provisions of this bill the petition comes accompanied by the two affidavits of the verifying witnesses, and by this verification of the claim of the time of landing by the alien who makes this petition.

Mr. WOOD. Do you not think that the status of a minor child between the ages of 16 and 21 would be unfortunate? Such children would have no nation to look to for protection.

Mr. CAMPBELL. Do not the laws of all countries make provisions in regard to their native-born citizens?

Mr. WOOD. They would be native-born citizens residing in the United States.

Mr. CAMPBELL. Exactly; they would be native-born citizens residing in the United States. What would they lack?

Mr. WOOD. And their parents would have indicated their intention of throwing off their allegiance to their native government, and consequently the children could hardly with any show of propriety ask for the protection of that native government.

Mr. CAMPBELL. Do you mean protection against any injustice here?

Mr. WOOD. While going abroad—for the purpose of prosecuting studies, for instance.

Mr. CAMPBELL. While abroad?

Mr. WOOD. As students.

Mr. CAMPBELL. Yes. We would of course very much like those that go abroad to remain here and study. Of course, so far as that feature is concerned, speaking for myself individually, I did not give it much thought, because, even such being the case, the paramount consideration with me was to do what was best to protect this Government, to prevent the naturalization of those who are not fitted for it in any way, and it was a lesser evil, if an evil at all, that these minor children, or so many of them as go abroad, should be without protection. I say it is a minor evil by comparison with that of bringing wholesale into the United States those who can not be in anywise qualified.

Mr. HAYES. Along that line, can you see any difference in the status of a child under the law as you propose and under the law as it now exists? An alien comes to this country and is obliged to live for five years here before being naturalized?

Mr. CAMPBELL. Yes, sir.

Mr. HAYES. And he is obliged to declare his intention three years before?

Mr. CAMPBELL. Three years before.

Mr. HAYES. And during that time where are the minor children then? They are occupying certainly no worse position than under this bill, and certainly no complications have ever arisen that I know of.

Mr. CAMPBELL. It seems to me it would be a very exceptional case where any embarrassment would arise to any such minor child.

Mr. BONYNGE. I do not know what may have taken place this morning before I came in, but I was going to ask you to briefly outline the procedure that an alien would have to go through to become naturalized under this bill. Doing away with all the verbiage of the bill, will you please outline the procedure to become naturalized under the bill?

Mr. CAMPBELL. Briefly, he would apply to the circuit court authorized to naturalize aliens at least ninety days before such petition was to be acted upon.

Mr. BONYNGE. That is the first step he takes?

Mr. CAMPBELL. Yes, sir.

Mr. BONYNGE. No declaration of intention?

Mr. CAMPBELL. No, sir; and no preliminary action of any sort. The bill states what that petition shall contain, and he shall produce two credible witnesses who are citizens of the United States and who shall testify to their acquaintance with him during the last preceding five years at least, and that he is of good moral character, and who shall also testify to his attachment to the principles of the Con-

stitution. He also names to the clerk his witnesses. The clerk then posts conspicuously in his office the name of the petitioner and the names of the petitioner's witnesses, which are given at the same time.

The clerk states as nearly as he can the term of the court or the time during the term of the court when that petition will be heard, and he issues subpoenas to compel the attendance of these witnesses at that time. The bill then makes a provision that no such petition shall be heard within thirty days of the date of a Congressional or Presidential election.

To go back a little, within ten days after the filing of the petition the bill requires that the petition and the accompanying affidavits shall be sent to the superintendent of naturalization at his office in Washington. There is a further provision—that relates to the subsequent period—that such of the proceedings before the court shall be sent to the superintendent of naturalization as the superintendent may require.

And while I am at that point it may be well to state that the last gentleman who spoke here the other day was evidently laboring under the impression that the bill required that such complete record of the proceeding should be sent in in every case, because his argument against the provision was based on the supposed enormous accumulation of documents, so that practically it would be impossible for the Department to find room for these bulky records coming from all over the United States. Now, the third process, leaving out the matter of fees, and so on——

Mr. BONYNGE. Yes.

Mr. BURNETT. What would be required to be filed here?

Mr. CAMPBELL. Originally the certificate and the affidavits—the certificate verifying the date of the arrival of the petitioner in this country.

Mr. BURNETT. Those are the only documents necessary?

Mr. CAMPBELL. Those are the only documents. They furnish all the information necessary to enable the superintendent to make an investigation to determine whether he thinks that the Government should oppose this application or not.

Mr. BURNETT. Yes.

Mr. CAMPBELL. Then the request for the proceedings is based on a later petition, allowing the Government to appear in the court, and in the court of appeals and in some cases in the Supreme Court of the United States, to oppose the petition. And where there is any opposition primarily that the certificate shall not be issued until the expiration of ninety days after the original petition, unless the superintendent of naturalization notifies the court in writing that the Government does not intend to take an appeal.

Mr. BONYNGE. So that it would take from three to six months after the application before the applicant could become naturalized?

Mr. CAMPBELL. From three to six months before he could become naturalized.

Mr. BONYNGE. And what would be the total expense to an applicant of becoming naturalized?

Mr. CAMPBELL. The total expense is——

Mr. BENNET. Seven dollars.

Mr. CAMPBELL. Seven dollars, except the expense of the witnesses. There is an extra amount deposited to cover the attendance of wit-

nesses, and the bill provides that after such expenses are paid the balance remaining shall be returned to the petitioner.

Mr. BONYNGE. The bill provides that he must be able to read and write in his own language and to read the English language?

Mr. CAMPBELL. To speak and read in the English language and to write in his own tongue.

Mr. BONYNGE. So far as writing is concerned, he need not do that, but he must read and speak—

Mr. CAMPBELL. The English tongue.

Mr. BONYNGE. The English language?

Mr. CAMPBELL. Yes.

Mr. BURNETT. Before he makes his application?

Mr. CAMPBELL. Not before he makes his application, but before he is granted his naturalization.

Mr. BURNETT. Would that be a part of the evidence taken before the court, that he could do that?

Mr. CAMPBELL. Yes, sir; by the court.

Mr. BURNETT. The court that finally grants the naturalization papers?

Mr. CAMPBELL. Yes, sir; the court that finally grants the naturalization papers. And the bill requires that the examination shall be in open court; that the witness shall be examined there.

Mr. BURNETT. And that would be a part of the testimony that would be delivered before the court orally there—that is, the testimony of the applicant himself that he could read English and could read and write in his own tongue?

Mr. CAMPBELL. I do not remember whether that is provided or not.

Mr. BENNET. The petition can only be made by a man who can write.

Mr. BONYNGE. He must sign his name?

Mr. CAMPBELL. Yes, sir.

Mr. BONYNGE. There is a provision for those who are physically disabled by the loss of a hand, and so forth.

Mr. CAMPBELL. Yes.

Mr. HAYES. It is required that all things he must prove must be stated in his application?

Mr. CAMPBELL. Yes, sir.

Mr. BURNETT. He must state that he can read English and can write?

Mr. CAMPBELL. That is provided in general terms; provided by the laws of the United States, and so forth.

Mr. HAYES. Of course we could draft a petition and incorporate all those things in the body of it—right in the law.

Mr. BENNET. The United States marshal in the southern district of New York calls my attention to the fact that there is one provision of your bill which would absolutely swamp his office, and that is the provision relative to the subpoenaing of witnesses; and he makes this point, that it seems to him unnecessary, because the man can not be naturalized until these witnesses are produced in the court, and he is in the position of any man who is engaged in litigation—he is dependent upon his witnesses. And these are willing witnesses, and so it is not necessary to subpoena them.

Mr. CAMPBELL. The committee thought of that, but they thought

that inasmuch as we are requiring proof of these conditions the alien was entitled to some kind of compulsory process.

Mr. BONYNGE. We could provide for a compulsory process if needed, and not make it mandatory.

Mr. BENNET. It seems to me where we have to prove our moral character and have to subpoena witnesses and to compel them to come we are not going to be able to prove a very good moral character.

Mr. CAMPBELL. But the point made by Mr. Morle in regard to the checking of the speed of naturalization is undoubtedly a good point. That was the very object of the Commission.

Mr. HAYES. Did the Commission give any thought to this proposition which was suggested to me by our United States circuit judge in California, that instead of posting the notice, which your plan requires, to require the publication of a notice in a newspaper?

Mr. BONYNGE. That would be too expensive, and would be more troublesome than is necessary.

Mr. CAMPBELL. The Commission considered this subject and was rather of the opinion that the posting at the residence of the alien would practically answer every purpose. It would be notice to the public.

Mr. BONYNGE. And it would give the Government notice of the application, so that it would cover every objection, it seems to me, to that.

Mr. HAYES. But he suggested that it ought to be printed, like every other notice, in the local paper.

Mr. BONYNGE. In the report that Marcus Braun has recently made, he speaks of the large number who have naturalization papers and who are permanently living abroad, and who acquire naturalization for the purpose of obtaining the protection of the United States while permanently living abroad. I think he refers to the fact that there are a thousand such persons in Jerusalem, and a great many in Armenia, who are in business there and rely on their naturalization for protection against the government where they are living. Has the Commission given any attention to provisions for preventing that sort of thing?

Mr. CAMPBELL. As I stated before you came in, the Commission at one time considered the propriety of recommending legislation that would result in the loss of citizenship as the result of permanent residence abroad, but there were so many clauses connected with it, and it was pointed out that when we deprived such citizens of their right to protection from this Government, they would practically be without any protection, since they would have lost any right to claim the protection which they had originally from other governments.

Mr. BONYNGE. Could they not reacquire the right to the protection of their own government?

Mr. BURNETT. They would be in no worse condition than the man who was naturalized over there before he was naturalized here.

Mr. HAYES. I think England and France and all large governments have a provision that when a man returns and desires to resume his standing as an English subject or a French subject, for instance, he can do so.

Mr. BENNET. I have had it said to me, on what I thought was good authority, that a certain class of citizens paid some of our court clerks

as high as \$500 or \$1,000 apiece for naturalization papers granted to them, somewhat irregularly, for the purpose of going down and living in Haiti, where American citizens are protected, and citizens of certain other countries are somewhat slightly regarded. Have you heard any such rumors as that?

Mr. CAMPBELL. No, sir; only the general fact, of which we have knowledge, that many aliens do secure naturalization apparently for that purpose only. I think that the records of the State Department will show that in many, many cases the application for the passport is made within two or three days from the date of naturalization. I think my colleague, Mr. Hunt, will verify that statement, and Mr. Braun gives the dates which will bear out that statement.

Mr. BONYNGE. Yes.

Mr. BENNET. Mr. Hunt did state that.

Mr. BURNETT. I have not compared the law as it exists now with this bill as to these requirements for naturalization. What is the difference between the existing law and this bill in regard to being able to read and write, and so forth?

Mr. CAMPBELL. They are not very greatly different, except with regard to that point I have referred to, that they shall be able to read and speak the English language intelligibly, and shall be able to write in their own. The strong point is that the witnesses shall be American citizens, and shall be heard in open court.

Mr. BURNETT. An oral examination?

Mr. CAMPBELL. Yes.

Mr. BONYNGE. And opportunity is granted to the Government to appear?

Mr. CAMPBELL. Yes, sir; which it is not now.

Mr. BONYNGE. And there is a delay of from three to six months after the date of filing the application before the alien is naturalized?

Mr. CAMPBELL. Yes, sir.

Mr. BENNET. Do you not think there should be the proper provision in your bill either authorizing or directing the United States attorneys to go into court and contest these cases whenever this Bureau thinks a case ought to be contested? There is nothing of the kind in the bill.

Mr. CAMPBELL. I do not know that an express requirement of that sort would be necessary, would it?

Mr. BENNET. They like to have us express authorization.

Mr. CAMPBELL. Of course I would rather have you hear from the Assistant Attorney-General on that, who is here and can enlighten you on it.

Mr. BONYNGE. The bill, I think, does provide that it must be a continuous residence in the United States of five years, does it not?

Mr. HAYES. No, sir; it does not.

Mr. CAMPBELL. I do not think so. Practically a continuous residence. If an alien goes abroad temporarily with the intention of returning I should say would be rather a question of fact.

Mr. BONYNGE. But you take a great many of these Italians, and I think it is established that many of them do go regularly for a portion of the year. They come over here for a time and work and then go back, return to Italy, and then when there are good times again they come back and work again.

Mr. CAMPBELL. I think they spend very little time when they go back. I think that the reports of the outgoing vessels indicate that they go home in the winter and stay a portion of the winter and return in the spring.

Mr. HAYES. Mr. Braun in his report here makes the statement that Mr. Bonyng has just made, that they come here and work a while and then go back and stay perhaps four or five years, and at the expiration of five years from their first entry they apply for naturalization.

Mr. CAMPBELL. This bill does not require a continuous residence of five years, as I recall it. It is a question as to what constitutes continuous residence.

Mr. HAYES. I shall suggest, when the time comes, that it be an actual continuous residence and not constructive.

Mr. BONYNGE. I think to say that it should be actual continuous residence would work great hardship in many cases. I think to require them to have a continuous actual residence in the United States would work hardships. Here is a man who comes over and leaves his wife and family at home, and he stays here for a year or two, possibly, until he is well established in this country. Then he goes back and gets his family; and if actual continuous residence for five years is required, the fact that he had gone back to get his family would break the continuity of that period.

Mr. CAMPBELL. The Commission thought, and I still think, that it established pretty strict requirements and that it had established a pretty conclusive way of proving those requirements. The residence for five years is really for the purpose of enabling an alien to acquire a knowledge of our institutions. If he is really fit at any time, that is the time that he should be admitted. He constitutes a less dangerous element here after he becomes qualified—or rather he constitutes a more desirable element as a citizen than as an alien.

Mr. GARDNER. I will ask you to refer to page 108 of your report, the fifth line. Now, the question I wanted to raise was this: Take the question of Canadian fishermen from Nova Scotia and Newfoundland; they come down here and cast in their lot with us as much as anybody can, and also the French Canadians, who work in our shoe shops. Occasional visits of necessity are occurring across the line all the time. I do not think you joined with Mr. Hunt in the recommendation on that bill.

Mr. CAMPBELL. Not so far as the use of that word was concerned.

Mr. GARDNER. It was a matter of discussion in the Commission?

Mr. CAMPBELL. Yes, sir; it was a matter of discussion in this Commission.

Mr. GARDNER. And Mr. Hunt disagreed with the other members of the board?

Mr. CAMPBELL. Yes, sir; apparently Mr. Hunt disagreed. I had forgotten that Mr. Hunt had not receded from that disagreement from the majority of the Commission.

Mr. GARDNER. It would work great hardship as far as the fishermen in my district are concerned.

Mr. CAMPBELL. We think it would work hardship under any circumstances, because, outside of five years' residence, there are the means furnished of proving the fitness of a petitioner to become a

citizen of the United States, and there are means provided of preventing his becoming such if he is not qualified as such, and therefore it seems a hardship that many of these people who come here and who do not stay permanently, but go back, as I said before, in the winter during the Christmas time and spend two or three months with their families and then return here, should for that reason be debarred from citizenship; and of course the result of an exact and literal interpretation of the term "continuous residence" would prevent that without accomplishing anything.

Mr. GARDNER. I think it would be proper to require them to prove at least three years' residence out of the five. Would you think that practicable?

Mr. CAMPBELL. It seems to me that would be just introducing a complication into the measure.

Mr. BURNETT. Would a mere temporary absence of that kind be an abandonment of the continuous residence?

Mr. BONYNGE. If you say "actual and continuous," you are making it as strong as the English language can make it; that he has got to come and stay in this country for the full period of five years.

Mr. CAMPBELL. If you provide that it shall be an actual continuous residence, if he went abroad and stayed two or three months that would break the continuousness of the residence.

Mr. BURNETT. Suppose, for the purpose of illustration, that one State had a provision of this sort and the same man left his State two or three months and then returned, would that be a continuous residence?

Mr. CAMPBELL. It would depend on his announcement of his intention to become a resident of the new State, it seems to me.

Mr. HAYES. If I leave California and go to another State, my residence is continuous in the State of California just the same.

Mr. BENNET. Yes. So long as you do not confuse the idea of residence and domicile it is all right.

Mr. ADAMS. Under the national law the residence must be, as it is where the question of absence brings in the citizenship, decided by the question of intention. The question of intention plays a very important part in the decision of that question, and I do not see why it would not apply here. If a man did go abroad, and any knowledge was brought to the authorities, they could examine him, and if they could show that he had been absent a greater part of the time, as it stands now it could be shown the law had not been complied with.

Mr. BURNETT. Suppose a case where a man would go to Jerusalem and go into business there, I think it would apply there.

Mr. HAYES. There was a case given here of a man who went to Jerusalem and stayed six years and returned here and stayed two years, and got his citizenship papers and went back again.

Mr. ADAMS. That thing has given the State Department a great deal of trouble. They, as a rule, do not put themselves out very much in those cases.

Mr. BONYNGE. Let me ask you to explain the rules that controlled the Commission in doing away with the rule as to intent?

Mr. CAMPBELL. Because it is wholly useless for the purpose of proving the qualification of the applicant for citizenship, because it was made without any condition whatever, and because it did clothe him with certain rights in this country, and because it left it very

doubtful in his mind and in the minds of others in many instances as to whether he was an American citizen or not. I think Mr. Hunt called attention to the fact the other day that there are nine States in the Union in which a person who had made a preliminary declaration could vote in all elections. The mere statement of that fact, without any elaboration of any sort, suggests undoubtedly the fact of the necessity that some rule should be established in regard to residence here.

But it was abolished because there were other and more certain means of proving it. I would like to say to the committee on that point that I do not know that I made it clear the other day when I objected to the testimony of Mr. Morle that however imperfect the inspection may seem or may be along our land boundaries, of aliens, there is provision for the registration of aliens crossing from those contiguous countries into the United States.

Mr. BENNET. There is a lot of it.

Mr. CAMPBELL. There is a lot of it, and the aliens are aware of it. Now, if they fail to comply with that law and secure registration, they have only themselves to blame for being without that kind of proof—the most certain kind, it seems to me—that the law provides for, and it would not lie in their mouth to say that we had an inaccurate method of inspection.

Mr. BENNET. I had a case in New York where a Syrian girl tried to enter at New York, and she had trachoma, and she was denied entrance. Some one advised her to go up to Montreal and enter through Canada, and she did it, and then came across the border into Vermont and got clear down into New York State, and was found in a village there. By reason of her inability to speak English attention was attracted to her, and the immigration authorities got her and brought her back to New York and deported her, and I think for some reason or other, on account of her wanderings and all, the time between the time she originally arrived at New York and the time she was deported was nearly a year; but because she had got across the border, and there was no record of it, she was deported.

Mr. CAMPBELL. It was held in violation of law?

Mr. BENNET. Yes; and as I recollect it she was sent at the expense of the Government.

Mr. CAMPBELL. No; there was no occasion for that. Under the agreement with the Government she would have been returned at the expense of the company that brought her into Canada.

Mr. BURNETT. I notice on page 4 of this bill, No. 9964, there is a proviso as to the courts which shall have jurisdiction of naturalization.

Mr. CAMPBELL. Some gentleman suggested the hardship of that proviso, which reads:

Provided, That in all cities of the United States having a population of one hundred thousand inhabitants or over, according to the last preceding national census, no State court shall have jurisdiction to naturalize aliens.

Mr. BENNET. Here is a question that I want to ask you that would come more under your experience than Mr. Purdy's or Mr. Hunt's. Assuming that petition comes to you in the regular form signed by John Jones, who certifies that he came from England on a certain ship at a certain date, and gives the names of two witnesses who will testify to his residence in this country since, and to his good moral

character and the other things required in the petition. What is there anywhere that would attract the attention of the Bureau of Naturalization or anybody else to any facts subsequent to his coming here which would make him ineligible as a proper citizen, and what protection is the petition if it sets out correctly the facts as to his original coming?

Mr. CAMPBELL. The only protection to the Government is the opportunity to find out about the witnesses. As a matter of fact, there are regular professional witnesses engaged in the business of certifying that aliens who apply for naturalization have the necessary requirements, including the residence. It would not take very much experience for a bureau of naturalization, with its classification of the affidavits, to discover any such condition of facts as that. That would naturally lead them to make an investigation.

Mr. BENNET. That is true. But if a man had lived a really evil life, as long as he kept out of jail since his coming here, and presented the names of two witnesses, which names were unknown to the Bureau, there would be nothing anywhere to put the Bureau upon inquiry.

Mr. CAMPBELL. The Bureau would go on inquiry and would make some kind of inquiry through its agents. It should have enough agents in the field to make investigation and make that of some practical value to the Government. Of course there would be nothing on the face of the papers—I admit that freely.

Mr. BENNET. You think it would be necessary to have agents to investigate every application?

Mr. CAMPBELL. I do not think there is very much question about that. You have regularly employed agents, and there is no reason why they should not make these investigations. In some cases it would take very little investigating to establish the facts that the person applying was in every way eligible.

Mr. WOOD. What about the requirement that in all cities of over 100,000 inhabitants naturalization shall only be conferred in United States courts?

Mr. CAMPBELL. It was suggested that Mr. Purdy would answer that.

STATEMENT OF MR. MILTON D. PURDY, OF THE DEPARTMENT OF JUSTICE.

The CHAIRMAN. The Assistant Attorney-General will be glad to answer any questions regarding these bills.

Mr. ADAMS. I would like to hear from you, Mr. Purdy, in regard to the provisions of the bill.

Mr. PURDY. I believe that the committee were convinced from the early investigation of this question that if it were possible to have confined naturalization matters to one court, to any one place, it would have been desirable to do so; and also we started out upon the theory that we could provide the necessary machinery for confining it to the Federal courts, inasmuch as it is a Federal function.

But we early became convinced that that was impracticable, if not impossible, even through the United States commissioners in the various States, and therefore we concluded to follow the old law so far as State courts were concerned, permitting them to naturalize.

Then, it finally occurred to us that in the larger centers of population—we just took cities of over 100,000 as a convenient class—even with those cities there was probably not a city of that size that did not have a United States court. I may be wrong about that in some of the States in the East, but so far as the Western and Southern States are concerned there are a great many places in those States of only 10,000 inhabitants which have United States courts.

In my own State, Minnesota, they have cities of 10,000 population where they have United States courts twice a year. So that if it was necessary to increase the size specified here for those cities, that could be done, and you could make it 200,000 or 300,000. That was a mere matter of classification, to get to those cities where they have a United States court at least once or twice a year. There is no reason, if they have those courts there which are convened and if the work can be done before those courts, why they should not naturalize aliens, and so we fixed upon this figure, 100,000. I say that I may be wrong in my information about that, but I looked it up somewhat—not very carefully—to ascertain, and that is my impression. I remember that we took the cities of above 100,000 population, and we were satisfied that almost every city designated had a United States court.

Mr. CAMPBELL. Yes.

The CHAIRMAN. We only have a United States court in one city in the State of New Jersey. That is at Trenton. That is the only place where United States courts are held. In Newark and in Hudson City we have 300,000 population in each of those places, I suppose, and there are no United States courts held there.

Mr. BONYNGE. Jersey City has no United States court?

The CHAIRMAN. No.

Mr. BONYNGE. How much population has Paterson?

Mr. BENNET. Over 100,000.

The CHAIRMAN. There is none excepting at Trenton.

Mr. GARDNER. There is no United States court held at Lowell or at Fall River, Mass. Neither of them is a shire town and neither has a court-house.

Mr. PURDY. They hold United States courts in many places where they have no court-houses.

Mr. BENNET. That is not true in the East as it may be in the West.

Mr. PURDY. Perhaps that is so. It may be necessary to modify that provision. But there is this point to consider: Of course so far as holding court is concerned, in the East litigants can get there. A district of that size is not much larger, possibly, than some of the divisions of a district where they hold court in some of the Western States. But I say that is a matter that can be changed. The principal places to be gotten at are New York, Chicago, San Francisco, Philadelphia, Boston—these large centers of population.

Mr. BONYNGE. You would probably have to raise the qualification to 500,000.

The CHAIRMAN. Could it not be made to read in this way: "Cities of 100,000 or more having a United States court?"

Mr. PURDY. Yes, sir; that would be all right.

Mr. HAYES. You are familiar with the practice of the courts and the provisions of this bill. Suppose it was enacted into law that in these large places only United States courts should naturalize; is it

not likely that we should have to have a large increase in the number of district judges?

Mr. PURDY. I think the United States attorney has already recommended another judge for the southern district of New York. We are not able to try our criminal cases there now.

Mr. BENNET. I do not think they need an additional United States judge there any more than a hog needs a side pocket.

Mr. PURDY. We have Judge Thomas coming over from Brooklyn all the time to hold district court in the southern district of New York, and we either need Judge Thomas to come over there, or we need another judge.

Mr. BENNET. Judge Thomas is a very good judge.

Mr. PURDY. Yes, sir; but I think it is a bad practice to have judges going into other districts all the time, and especially in view of the fact that we have had in the southern district of New York many criminal cases, post-office cases particularly, and there have not been more than three or four post-office cases tried there in the last two years. We have had cases going along and defendants released on improper bail, and sometimes having the same man again. But that is a diversion. I think we would have in some cases to increase our judicial force; but I think if these increased standards of citizenship were required, we would not have nearly so many aliens naturalized, especially in these larger centers of population.

Mr. BURNETT. Nor so many applicants?

Mr. PURDY. No, sir; nor nearly so many applicants.

Mr. HAYES. No.

Mr. PURDY. And then again, naturalization would not be done in the hurried way that it is now.

Mr. HAYES. It should not be.

Mr. PURDY. Now it is done spasmodically and sporadically. They want to get naturalized before an election, or some particular time, and then the courts are flooded, and at other times there is nothing done. If the court could take this thing up as it does its other business, and divide it up and apportion it and establish special terms every month to hear these naturalization cases, I think that they could naturalize a great many citizens in the course of a year with the present force.

Mr. BENNET. You are aware that they do that now in the New York County supreme court? They set aside every Wednesday afternoon.

Mr. PURDY. I do not know about that, but I know it is the practice to do it in some districts.

Mr. BENNET. It is the practice in the State courts that aliens should be naturalized in open court.

Mr. HAYES. Did the Commission consider the arguments pro and con for establishing the term of residence beyond five years?

Mr. PURDY. Yes, sir; we did in a general way, and I think Mr. Hunt was probably as well posted on that question as any man could be, and after discussing it—we discussed it a great deal—and considering the arguments pro and con we came to a conclusion. We generally worked with this idea, that we would make as little change as possible, except in those things that were radically wrong in the existing law. We did not want to create any more confusion or make any more innovations than necessary, and so we came to the

conclusion that five years would, under all the conditions, everything considered, give an alien an opportunity, if he was really desirous of becoming an American citizen, to become qualified, and if he were qualified to become an American citizen, then it was better to have him in than to take him out.

Mr. BONYNGE. Now, in reference to registering the old certificates of naturalization. It is provided in the bill that there should be a registration of the old certificates. What have you to say as to that? You heard the discussion the other day here.

Mr. PURDY. I think the other members of the Commission were opposed to me, rather, all along. I think that was my pet, if anything, and finally Mr. Campbell reluctantly agreed with me that something ought to be done. Of course, he recognized the evils. Mr. Hunt will never consent to it. I think he opposed it on legal, if not constitutional, grounds. But this was my idea. I had had special charge of these prosecutions of naturalization frauds for the past two years as Assistant Attorney-General, and all these cases came under my immediate supervision.

Over in the southern district of New York we have established a sort of bureau, not having really any direct power to do it; but simply because we had to deal with the subject we have established a sort of a bureau, a prosecuting agency over there, that was costing the Government about \$30,000 a year. We got some very good results; but here was Pennsylvania—Philadelphia—calling for the establishment of a similar bureau, and San Francisco and Chicago also calling for it, and we were afraid that we would bankrupt the Government, for a while, if we established these bureaus for the prosecution of these naturalization frauds where they ought to be. So that we really gradually let the prosecutions drop, to a certain extent, in New York, thinking that we would get a law that would obviate the necessity for further prosecutions.

Well, it occurred to me, from what I had seen in connection with those prosecutions and the ease with which these naturalization certificates could be forged and used and passed around from one portion of the country to another, that we would not get very good results, at least for a good many years to come, if we did not do something with those old certificates, those that are now outstanding in a thousand varied forms and in a thousand different courts, pretty near, and it was with that thought in mind that I tried to evolve some scheme by which these old certificates could at once be fixed as to their identity. Here is a certificate outstanding, issued by a State court, we will say, in Missouri, to John Jones.

Now, there is nothing to prevent that certificate being passed to John Jones in California or to John Jones in Philadelphia or to pre-vent certificates being forged in Boston purporting to be this certificate, which is a valid one, which, if you turned to the record of the courts there in St. Louis, you would find was valid. You would find from those records that there was a certificate issued at such and such a time to John Jones, answering to this description. John Jones may have that certificate in San Francisco, and it may be forged in another city, so that you will have a valid certificate and two or three forged ones purporting to be issued at the same port. And you could not tell whether the one that you had under consideration was the forged or the genuine one unless you had something by which to identify it.

I had in my mind the thought that the moment you cut off the present certificates—the present means of naturalization—all these people who were denied naturalization and could not obtain naturalization would be thrown back into this old field of corruption and fraud. They would say, “We can not get it under existing law, but we can go back here and dig up these old certificates and use them.” You can see at once that there would be a great incentive to employ present methods, even to a greater extent than they are employed to-day, and, so, as I say, the result was that I drafted this provision with the idea of fixing these old certificates, if possible.

The only way I thought they could be fixed was to say that they might be registered, that they may be, if the party holding them desires to use them in a court of the United States or before an official of the United States, and that is all that the law says. It does not attempt, as was stated here the other day, to denationalize or take away citizenship that has been conferred. We simply say, “You have a paper which has been issued under the authority of the United States. If you want to hereafter use that paper in a United States court or before a United States officer or at an election for a United States officer, you must go into a Federal court and have your name put on there and identified and have it registered, and then you may use it; otherwise you will have to be put to the trouble of getting the record of the court to prove your citizenship, instead of being able to prove it by the registered certificate.”

Mr. WOOD. It takes away the right to vote at a Presidential or Congressional election, does it not?

Mr. PURDY. No, sir. It takes away the right to have the person present this certificate as evidence of his right to vote.

Mr. BONYNGE. He could still prove his right to vote by getting the record of the court?

Mr. PURDY. Yes, sir.

Mr. BONYNGE. But he could not do it by relying on the certificate?

Mr. PURDY. Not by relying upon the paper issued. It is simply a rule of evidence which, it being convenient for me to have that certificate, will say that as long as it does not cost me anything to have that registered, why, I ought to go into court and have that registered.

Mr. CAMPBELL. It is very true, as the Assistant Attorney-General says, that this is his pet measure, and that personally I did not favor it. I would like to have the committee know why I did not favor it. My own view was that all outstanding certificates of naturalization should be invalidated, and that no certificate issued under any former act should be used as evidence of the citizenship of a person to whom it had been issued, and I proposed to provide in lieu of that that this person who had been naturalized should apply for and secure one of the new certificates issued under the new law, instead of the old certificate which he held, because the old certificate could not be counted. I went as far as Mr. Purdy, and even went further, exactly as I did in the case of the foreign-born minor children.

It struck me if we had a right to establish a rule of evidence in these cases we had the right to make any certificate issued heretofore invalid for that purpose, and as a result of making it invalid and constraining the naturalized citizen to get a new certificate, we would have something less liable to be tampered with than the old certificate with the indorsement under it.

Mr. ADAMS. Do you not think that would be an impairment of contract?

Mr. CAMPBELL. I do not think so. He has the same right and can prove his naturalization by the best evidence. That is the record of the court. We know, as a matter of fact, that these certificates are of all sorts and forms, and they have nothing about them to prevent their being fraudulently used. They are fraudulently used every day.

You gentlemen who have read Mr. Braun's report doubtless saw that many of the Jews in Jerusalem held certificates that had been issued to other men, and had assumed the names of the persons who had been naturalized. There is nothing to prevent anything of that sort. On this certificate, which is prepared under the provisions of this bill in such a form as to make it as near impossible to counterfeit as it is possible to make such a thing, we would have a much better security against the very fraud we are providing against by this measure as it stands; a much better means of preventing that than the bill now provides, because the old certificate, with the indorsement on it, after all may be counterfeited just as the original was.

Mr. ADAMS. Do you mean that a man should be deprived of the right to vote?

Mr. CAMPBELL. No, sir; but that he must prove his right in some other way.

Mr. BONYNGE. That he shall not be allowed to use the certificate as proof of his right to vote unless he has had that certificate registered. That is the point.

Mr. CAMPBELL. That is the only difference—how that is to be done.

Mr. BONYNGE. I did not understand that the other day.

Mr. HAYS. No; neither did I. I am very glad that you have brought that out.

Mr. BURNETT. Now, Mr. Purdy, will not those forged certificates be registered under this bill and operate just as the originals do?

Mr. PURDY. Yes, sir; there is no question about that. There will be a great deal of fraud perpetrated, and probably fraud that has already been perpetrated will be ratified to a certain extent; but the bill provides that after three or five years, I think, they shall not be allowed to register those certificates. They must register within that time, and that right will terminate within five years. That will be stopped within that time. After that time, if anyone shows a certificate, unless it is registered it does not amount to anything.

Mr. BURNETT. But the fellows getting a new certificate can go right along.

Mr. BONYNGE. But it limits the possibility of such things considerably. Just one other question I want to take up with you. That is with reference to the declaration of the intention. I am not quite sure what rights a person gets by making that declaration, but it seems to me before they can enlist in the Navy or join the Army they must be citizens or must have declared their intention of becoming citizens of the United States.

Mr. PURDY. No, sir; they must be citizens.

Mr. GARDNER. In reference to certain mail contracts, is there not a law which requires that in order to have those mail contracts the vessels must have a certain portion of the crew who are American

citizens, and does not that provision include a provision as to the intention?

Mr. PURDY. I am not familiar with that.

Mr. GARDNER. And in determining the nationality of our ordinary fishing or merchant-marine vessels is not the intention to become a citizen sufficient, where it requires that the master and the mate shall be American citizens?

Mr. PURDY. I did not know that there was any Federal law which recognized the declaration of intention as of any force at all. It may be that it does. But I know that a great many States—at least fifteen years ago, I think at least 12 or 15 States—provided (as, for example, my own State, Minnesota) in their constitutions that the person who had declared his intention to become a citizen of the United States was a citizen of the State. But we amended that constitution in 1896 or 1898 and struck out that provision and provided for full citizenship. So have a number of the other States amended their constitutions.

I think still that something might be accomplished by registration. I think that some effort ought to be made in that direction. I do not say that this particular provision is the best one that can be devised.

Mr. BENNET. I am rooming in New York with a young fellow of about my own age. He is a Scotchman by birth. He came here at 2 or 3 years of age, and has been naturalized, and he has his naturalization papers. To a careless observer we have in a way the same physical appearance. What would prevent me from taking his naturalization papers and going down to the clerk of the southern district of New York—my friend was naturalized in Connecticut, I think—and having that certificate registered and then coming back and letting him use it?

Mr. PURDY. Because in the registration you are required to sign your name; you are required to indorse your name on the back of the certificate. The clerk is required to indorse on there a physical description of you, and then you must place there your signature, and then there is a copy made of that and sent to the Bureau of Naturalization at Washington and a copy is retained. So that it is substantially the same with reference to that registered certificate as it is with reference to the new certificate registered under the existing law. The result of that concrete case you have cited would be this, that you would be registered under the name of your friend. You would go back and take the certificate to him, and he would present the certificate, and it would be absolutely of no use to him, because it would not have his indorsement on it.

Mr. BENNET. But only in a case where it came up in a Federal court.

Mr. PURDY. He could not use it to vote; he could not use it as evidence of his right to vote at a Presidential election. Of course he could go to Connecticut and get the record.

Mr. BENNET. In my State they do not have to sign anything when they register.

Mr. PURDY. That may be, but at the same time if there was any question you would have to present your certificate, and if a person presented a certificate that showed upon its face that he had not complied with the law it would be of no use to him.

Mr. BENNET. But it would; he would sign his name.

Mr. PURDY. But suppose a person at the election called upon him to sign his name?

Mr. BENNET. I would simply say, "Under the law of the State of New York I am not required to sign anything. I will take the oath."

Mr. PURDY. That is the point about this registration. It will give the States an opportunity to pass laws just as they have done with reference to their amended constitutions. It will give the States an opportunity to pass some stringent laws which will be carried out upon the basis of this registration. Now, the State of New York could pass a law that unless they had a certificate that was registered no alien could vote in the elections.

Mr. BENNET. But that would be a matter of six or seven years; you could turn it over to the Department of Justice.

Mr. PURDY. Oh, well, of course you might turn it over to the Department of Justice; but I want to say that I do not suppose we have 1 in 10,000 of the persons who have been guilty of fraud. The proposition is to do something to discourage these people who are engaging in these frauds from continuing the practice if it can possibly be done.

Mr. BENNET. I am frank to say that I do not think your proposition reaches it, because it is so easy to evade; the clerk in New York does not know anything about the system in Montana, and vice versa.

Mr. PURDY. No.

Mr. WOOD. This section 33 provides that no unregistered certificate shall be accepted, received, or considered at any Congressional or Presidential election. Would it not be a matter of expense and difficulty to secure other certificates, and should not the thing under the seal of the court be accepted as the best evidence?

Mr. PURDY. Not as the best evidence; no, sir. It would ordinarily be accepted; but it is within the power of Congress to at any time change that rule of evidence and to affect the right of the parties as to the right to use that certificate. As, for instance, to-day a man has 10 peremptory challenges on trial on a charge of felony.

Congress can reduce that to five or two challenges, or cut off altogether his peremptory challenges and pass an ex post facto law to operate upon offenses already committed. Now, if Congress has the power to do that with reference to a right which you claim that you have under existing law, to challenge on a trial for a felony, certainly Congress has a right to say to a naturalized alien, "If you have a certificate that can be used now as evidence before an officer of the United States, if you are going to use it to-morrow, we are going to require you to do thus and so."

Mr. BENNET. It is a question of procedure?

Mr. PURDY. Yes, sir. Does that answer your question, Mr. Wood?

Mr. WOOD. If he did not do that it would be a matter of expense and difficulty in producing the transcript of the record of the court?

Mr. PURDY. Yes, sir; and that is the purpose of it, to force him to register; to force him to register his certificate, because if he does not it will be an expense to him.

Mr. BURNETT. In section 15 of the bill, where the alien is required to sign a petition, was the purpose of that to require him to sign his name in full, and not sign by mark?

Mr. PURDY. Yes, sir; unless he was absolutely disabled from doing so.

Mr. BURNETT. We have a section in the Alabama law which says that signature shall embrace signing by mark. I think they would construe that kind of a signature to be permissible, under the law in Alabama.

Mr. PURDY. Do you think that would apply where the law provides that he shall be able to read and write?

Mr. BURNETT. That may be true, but here is the evidence in court. When he comes to be naturalized, here is the petition that starts him. That is required to be signed by the applicant. Perhaps that would be the construction. I expect you will find that most of the States have a provision of that kind.

Mr. PURDY. That may be true in regard to signatures, but I think where the whole law shows that the great purpose of the signature, as here, is the identification of the party, and the law requires that he must be able to read and write either in his own language or the English language, under those circumstances they would not permit a man to make his mark for the mere purpose of fraud. And if he could write, it is quite improbable, it seems to me, that he would resort to making his mark.

Mr. BENNET. Have we the right to constitute the State courts courts of the United States for any purpose?

Mr. PURDY. I think so. I will answer that question very bluntly and very frankly. I think that if we can confer powers and duties upon the courts of the States which they may exercise there can be no possible objection nor any constitutional trouble in making them courts of the United States. We could not compel them to be courts of the United States. If you will notice the provision in this bill, we are very careful to provide in that way. We say that the Federal courts shall do so and so, but that the State courts "may" do so and so, and we put it within their power to elect as to whether they will assume to perform those duties or not.

Mr. BENNET. It has been held that although you did confer powers upon the State courts to naturalize, the State courts themselves could refuse to act.

Mr. PURDY. And if the courts themselves assume to act, and there is no prohibition of the legislature on that, I do not see why they would not be considered courts of the United States.

Mr. BURNETT. The Federal courts give authority to the justices of the peace to try liquor cases.

Mr. PURDY. Yes; and the Federal statutes confer, under section 1014, the right of removal, and to give the power to the police court or the mayor or justice of the peace to issue his warrant to arrest a prisoner for an offense committed in some other district; and I have personal knowledge of one instance where our Federal court punished a sheriff for contempt of court in failing to keep a Federal prisoner confined in jail, on the theory that he was performing the duties of an officer of the United States.

Mr. BURNETT. That was after he had taken him?

Mr. PURDY. Yes, sir.

Mr. BURNETT. They could not have compelled him to take him.

Mr. PURDY. I think they could, because the State law provides that they shall receive prisoners of the United States. And, of course, it may be necessary that there shall be some ancillary legislation, or might be. States might prohibit their courts from performing these

duties. But I doubt very much whether they would when the clerks of the courts were getting the fees.

Mr. BENNET. I would like to ask you the question that I asked, Mr. Campbell: Would it not be advisable to have in the bill somewhere a clause authorizing and directing the United States attorneys—

Mr. PURDY. To prosecute?

Mr. BENNET. Yes. When the United States attorney came to tax up his fees and costs might there not be objection unless there was express authorization for him to do these things?

Mr. PURDY. My personal idea about that is that the officers of the Bureau would probably, in an ordinary case, either have their own attorney or be sufficiently cognizant to take care of it themselves before the courts. If it was a case of special importance they would request the United States attorney to assist them, which, of course, he would do. It being a matter in which the Government was interested and in which an appeal would be taken and of which he would have charge, he would naturally take part.

Mr. BENNET. There is sufficient authority under existing law for him to do that, and for the recompense?

Mr. PURDY. Yes, sir; all he would have to do would be to wire to the Department of Commerce and Labor, and the Attorney-General would direct him to do it, just as in other cases.

Mr. BENNET. Is it a fact that when a man has declared his intention he can enlist in the Army or the Navy?

Mr. PURDY. No, sir; I think not.

Mr. GARDNER. It is done repeatedly.

Mr. PURDY. I think not.

M. GARDNER. I have plenty of cases of enlisted men, and I remember a commissioned officer who was in that position. He was in the Rough Riders, of course.

Mr. BENNET. They have a right to enlist.

Mr. PURDY. In the Army?

Mr. BENNET. In the Navy, anyway.

Mr. PURDY. If you have a copy of the compiled statutes here we can settle that very quickly.

The CHAIRMAN. If that be true, I was wondering what effect naturalization would have on a man's enlisting in the Navy or Army.

Mr. PURDY. I do not believe that we would have any difficulty in getting as large an Army as we desired in time of actual war. But this could be all modified at a moment's notice, so far as enlistments are concerned.

The CHAIRMAN. In the Marine Service we have now a difficulty to get as many men as we need.

Mr. PURDY. That may be. There may be objection on that ground.

The CHAIRMAN. Personally I am quite in favor of doing away with it, but I was wondering what effect it would have. My understanding of it has been that when a man declares his intention he can enlist in the Navy or in the Marine Service.

Mr. GARDNER. In the ordinary merchant-marine service all that is required in the way of nationality is that the master and the mate should be Americans. But in the case of certain vessels that carry mail contracts, like the American Line, a certain portion of the crew is required to be American.

Mr. HAYES. Did the Commission consider the proposition of providing that a man shall lose his naturalization by a long-continued absence abroad?

Mr. PURDY. I think we considered pretty nearly everything.

Mr. HAYES. What did you think of it? Suppose a man goes to Germany after he is naturalized and lives ten years continuously?

Mr. PURDY. I think Mr. Campbell and myself were in favor of some provision governing a case of that kind. But Mr. Hunt, who has very close and clear ideas in respect to matters of this kind, kept insisting that this matter should be confined to naturalization, and we should not go into questions of citizenship or to expatriation. What we were appointed to consider was naturalization. Therefore that was one of the questions that we simply passed over in that way. We thought that that was a matter quite aside.

Mr. HAYES. If I am correct in regard to the law, this is the way the law is to-day. For instance, I know a young man who lived in this country fifteen or twenty years, who was a citizen and a voter, who has gone back to Sweden and married there, and who intends to make it his permanent home. Under the law as it is to-day his children born in Sweden would be natural-born citizens of the United States, and they can come back here and vote the next day after they get here. Am I correct?

Mr. PURDY. They are obliged to be.

Mr. HAYES. That strikes me as a very bad provision of the law.

Mr. PURDY. Do you not think that those cases are really exceptional in the great number of people that are naturalized?

Mr. HAYES. I do not think it is very exceptional. Here are a thousand people who live in Jerusalem, according to the statement of Mr. Braun. Every one of their children, when they come to the United States, are natural-born citizens of the United States, and can vote the next day after they get here, under the law as it is to-day.

Mr. PURDY. I think the principal difficulty with that thousand people who are naturalized in that way would be their getting into trouble in the country where they are living, and getting us into an international complication.

STATEMENT OF MR. GAILLARD HUNT, OF THE DEPARTMENT OF STATE.

If the committee will permit me, I would like just a moment. Just as the registration of certificates is the pet of my colleague, the child law is my pet, and I want the committee to know, before it proceeds with the question of citizenship, that that question is already pending, having been brought before another committee, and that a bill, or rather a joint resolution, has been introduced looking to the creation of a commission on citizenship. I will read a letter from Mr. Root, Secretary of State, to the Chairman of the Committee on Foreign Affairs:

DEPARTMENT OF STATE,
Washington, January 20, 1906.

The Hon. ROBERT R. HITT.

*Chairman of the Committee on Foreign Affairs.
House of Representatives.*

MY DEAR MR. HITT: Allow me to informally call your attention to a matter in which this Department is much interested and which was brought before you by a letter from Mr. Hay, dated January 16, 1905.

The President's annual message of December, 1904, stated that the laws relating to citizenship of the United States ought to be made the subject of scientific inquiry with a view to probable further legislation, and the message separated the questions of citizenship and naturalization.

As you are aware, the President created during the recess of Congress a naturalization commission, composed of a member from this Department, one from the Department of Justice, and one from the Department of Commerce and Labor, and the commission's report and recommendations were laid before Congress at the beginning of this session. So far as naturalization is concerned, all that the Executive can do in the way of recommendation has, I think, been accomplished by the report of the commission, and a number of bills have been introduced at this session looking to necessary improvements in the naturalization laws. But this does not at all affect the desirability for a citizenship commission, to make an expert examination into our citizenship laws with a view to rectifying some of the anomalies that now exist.

I inclose a copy of the draft of a joint resolution to create a commission to examine into the subjects of citizenship of the United States, expatriation and protection abroad, which the Department sent you with its letter of a year ago. If such a resolution were passed, the design would be to appoint upon the commission an officer of the Department and four other members, who, from experience and especial qualifications, might be expected to make an exhaustive examination and submit intelligent recommendations to be laid before Congress.

To compensate the members adequately would hardly be feasible and their service would be largely complimentary, but in order that they might not actually be put to any expense the resolution proposes to give each one the sum of \$1,000 in full satisfaction for his services, and to appoint a secretary of the commission, at a compensation of \$100 a month. I may add that I do not believe it would be feasible to create a commission to deal with this important question exclusively from executive officers of the Government, as was done in the case of the naturalization commission, because the best material for such a commission is not to be found in the Departments.

I am, my dear Mr. Hitt, very truly, yours,

ELIHU ROOT.

Then follows a resolution which was introduced in the House yesterday, by Mr. Hitt.

Mr. BENNET. We have that in the Congressional Record of this morning.

Mr. HUNT. The letter shows what it is. It provides for a commission of five men, four outsiders, to take into consideration the most complicated and difficult questions and report upon them of these national and international relations. The design would be to have some men like Mr. Olney, for example, and different publicists who have gone thoroughly into this subject to make an exhaustive report on it. That is why I think this bill should leave out the question of children's citizenship and let it go into another measure.

The resolution referred to by Mr. Hunt is as follows:

JOINT RESOLUTION To create a commission to examine into the subjects of citizenship of the United States, expatriation, and protection abroad.

Be it resolved, etc., That the President of the United States be, and he is hereby, authorized to appoint, by and with the advice and consent of the Senate, a commission of not more than five members, having especial qualifications for the purpose, to examine into the laws, rulings, and practice of the United States relative to citizenship, expatriation, and the protection abroad of citizens of the United States, and to make a report and such recommendations thereon as they may deem proper to the President, who shall transmit the same to Congress for its consideration.

It shall be the duty of the Secretary of State to provide quarters for said commission and necessary clerical assistance, printing, and stationery, and to assign an officer of said Department to be secretary of said commission, who shall perform the duties of said office in addition to his regular duties and

shall receive as compensation the sum of one hundred dollars per month from the time the commission is organized until its labors terminate, in addition to his regular compensation as an officer of said Department; and in lieu of pay for traveling expenses and subsistence and in full compensation for his services each member of said commission shall receive the sum of one thousand dollars, one half of which sum shall be paid him upon his qualifying as a commissioner and the remainder upon the termination of the commission's duties, and if any member or members of said commission be already in the employ of the Government of the United States such compensation shall be in addition to his regular compensation.

The sum of ten thousand dollars, or so much thereof as may be necessary, is hereby appropriated for the purpose of carrying out the provisions of this resolution.

(At 12.15 o'clock p. m. the committee adjourned.)

COMMITTEE ON IMMIGRATION AND NATURALIZATION,
HOUSE OF REPRESENTATIVES,
Washington, D. C., February 20, 1906.

The committee met this day at 10.45 o'clock a. m., Hon. Benjamin F. Howell in the chair.

The CHAIRMAN. Gentlemen, we will now proceed with the Commissioner-General.

Mr. BONYNGE. What bill will be taken up first for the statement of the Commissioner?

The CHAIRMAN. Whatever bill you like first.

Mr. BONYNGE. The idea is to get Mr. Sargent's ideas regarding the various bills?

The CHAIRMAN. Yes; and Mr. Sargent is now here and will be glad to answer any questions we may ask.

Mr. BONYNGE. I suggest, in the first place, Mr. Chairman, that Mr. Sargent give his ideas of what amendments should be made to the immigration laws.

Mr. HAYES. That is what I should like to have him do.

The CHAIRMAN. Very well. If that is agreeable it will be done. Have you any particular bill that you want to refer to, Mr. Sargent?

**STATEMENT OF MR. F. P. SARGENT, COMMISSIONER-GENERAL
OF IMMIGRATION.**

Mr. SARGENT. There is a bill here which contains much of the views upon immigration that I expressed in my report. I thought I had a copy of it here. Yes, I have it. It was introduced by Senator Dillingham.

Mr. HAYES. I will say, Mr. Chairman, that I had an audience with Mr. Sargent a few days ago, and I introduced a bill embodying all his suggestions, but I do not see it here. I think it was yesterday morning that I introduced it.

Mr. SARGENT. Mr. Chairman and gentlemen of the committee. I have suggested in my annual report that we enlarge the class of excluded by adding imbeciles, feeble-minded persons, as well as those classes which are already in the law and excluded. Now, we had last year a larger number of people who came here who were certified as weak-minded and imbeciles, almost within the idiotic class.

The CHAIRMAN. The present law does not include those?

Mr. SARGENT. No; it excludes idiots or insane. In my observation of those people, and in talking with the medical officers, I find that they feel that it is absolutely necessary to exclude those people, and the medical officers do exclude them; but when it comes to a question of their being brought before the Department on appeal, the conditions are these: A man comes here with a large family, and perhaps two members of that family are weak-minded or imbeciles, certified as such. Now comes the question of the denial of those two. In order to exclude them you must of necessity also exclude the whole family, because they are usually children or young persons and entirely dependent upon the elder members of the family; and it always occurs to me that it is dangerous to admit into our country that class of weak-minded, feeble-minded, imbecile people, because as they grow up they will, of necessity possibly, marry and intermarry, and the results are easily comprehended; and from the standpoint of good citizenship, of good people, it seems to me that that class of people should not be admitted into the United States, and that they should be included in the excluded class, the same as you exclude idiots or insane.

Mr. BONYNGE. In that connection, Mr. Sargent, the act as it now stands excludes those who have been insane at any time within five years. Why not include those who have ever been insane?

Mr. SARGENT. I do not know why we should not. A person who has been insane at any time is a very doubtful person to admit at any time.

Mr. BURNETT. And liable to become insane again at any time?

Mr. SARGENT. Yes.

Mr. BURNETT. Now, suppose there was a child of 5 years old, a child of tender years, a child of a very worthy and acceptable immigrant, would your idea be to exclude that child on account of its imbecility and send it back?

Mr. SARGENT. If the medical officers who passed upon the condition of that child rendered a certificate that the condition of that child will never prove idiotic, we must admit that child. We have a great many cases of that kind. I remember one recently of a very nice-appearing woman who had with her a child who had never spoken. The child was about 5 or 6 years of age, and had never spoken since its birth. It was perfectly indifferent to any notice or attention to anything, and the line was so closely drawn, you see, that the doctors hesitated long before they would render a certificate of imbecility, but they finally did, and of course the child was excluded, and the mother was excluded and returned because there were no responsible people here to take care of them. The woman was alone; she had come here with the expectation of earning her own living, and of course no one would care to take care of that child for her, and it was absolutely necessary under the conditions to return her. If we had an improved exclusion law and some other things, which I hope you gentlemen will consider in connection therewith, those persons would never have been permitted to come to this country. It would be better for them, and better for us.

Mr. BURNETT. Would you not lose some desirable parents in that way?

Mr. SARGENT. I think not.

Mr. BURNETT. The parents would not probably stay if the child was excluded?

Mr. SARGENT. We have some cases where one of the parents will return and put the child in an asylum on the other side, while the balance of the family will remain. Afterwards the parent comes back, leaving the child in some institution in Europe, and joins the rest of his family here.

Mr. BONYNGE. Your view is that even if we did lose a few good people by excluding the child under such circumstances, the general good of the community would be subserved by excluding the whole family?

Mr. SARGENT. Yes. It seems to me that we have reached that period in our existence when we can afford to be pretty careful in the selection of our people, and if we do now and then exclude a few worthy ones of a family like that, we are much better by doing that than we would be if we admitted a few like that——

Mr. BONYNGE. And took with them the imbecile members of the family?

Mr. SARGENT. Yes. The physicians and doctors with whom I have spoken say that the admission of these weak-minded and imbecile people means in a few years that we are going to have a great many people in our country of that same physical standard. They will marry and raise children, and the children will be like the parents. Recently, within the last year, we have had a good many more than before.

Mr. RUPPERT. What are the numbers of the last few years, about?

Mr. SARGENT. I can give you the statistics.

Mr. BURNETT. I suppose sometimes in Europe there would be a large family with several imbeciles?

Mr. SARGENT. Yes; we have had three certified out of a family of six.

Mr. FRENCH. Do not the governments there really intend to encourage such immigration from their countries?

Mr. BURNETT. To get rid of them?

Mr. SARGENT. Yes. There are no doubt institutions where the government officials and authorities of institutions in Europe would put no obstacle in the way of those people coming. I would not say they encourage it, but we have on record cases where the testimony shows that the person had been confined in an asylum or hospital, or had been supported by public charity for a long time, and is brought over here. The testimony is given to the effect that this woman or this person, as the case may be, was confined in a public institution; was practically a pauper before arrival here. And there is no doubt that a good deal of that is done, just as we are now asked by our own institutions to send out of the country all that come into their hands as public charges, and we are sending back a great many every month.

Mr. BONYNGE. What do you say, Mr. Sargent, about requiring all heads of families coming here with their families to have a certain amount of money with them?

Mr. SARGENT. I think every alien who comes to this country ought to have in his possession a few dollars. I do not say what the precise amount should be, although I have always thought that \$20 was little enough for a man coming into a strange country to possess.

Mr. BONYNGE. In my bill I provide that the head of a family should have \$30.

Mr. SARGENT. That is not too much for a man who has, as is often the case, a wife and six or eight children. We have families who come over here with 15 members; but as a general rule the head of such a family has a considerable sum of money.

Mr. BONYNGE. There is no requirement now that they must have any specific sum of money?

Mr. SARGENT. No. There are a great many people who come here who have not a dollar when they arrive. They appear before the boards and have possibly a ticket to some place; sometimes not even a ticket, and no money; but they have the address of some friend, to whom we are required to telegraph. A few days elapse, and perhaps that friend comes forward and sends them some money. It has always seemed to me that if every alien who came here had a sufficient amount of money to reach his destination, so that he would not stand before us on his arrival as a pauper, it would be much better; and if the law required it, he should have ten or twenty dollars in his possession when he arrived, because then those who come here for the purpose of settling and remaining here in a legitimate way would provide themselves with the necessary means to come. The few who come over here as a sort of experiment, to see what they can do, if they realize they must have a certain amount of money before they are permitted to come, they would be provided with that money.

Take a man coming here and going to Chicago without a dollar. That man must remain in the custody of the United States immigration authorities until he can reach Chicago. He must have sufficient to eat until he gets there. You can not turn a man loose and send him from New York to Chicago without a penny. You must of necessity hold him if it should so happen that his friends did not show up, and if no man came to his relief here, we must of necessity deport him and send him back. Why should he start without the means necessary to feed him at least until he gets to his destination? Every day at our stations, especially at New York, you will find a large number of people held there, subject, of course, to the expense of the steamship company, waiting for money from their friends to whom they have telegraphed.

Mr. BONYNGE. You think that requirement should apply to individual immigrants as well as those that come with their families?

Mr. SARGENT. Yes; I do.

Mr. BONYNGE. You would require a smaller amount for the man that comes alone than for the man who came with his family?

Mr. SARGENT. Yes; I think a man ought to have at least \$20. He might not get ready employment. You know in going to a strange place you may not run up against your friends the day you get there, and if you have \$20 in your pocket that may last you several days, until you find your friends or employment. If you have not any money, you are dependent upon somebody when you come. I have always believed that the law should provide for a small amount of money in the possession of the immigrant.

Mr. HAYES. Are there any other additions to the excluded classes that you desire to suggest?

Mr. SARGENT. Oh, yes.

Mr. BONYNGE. Let me ask in that connection about consumptives. There is nothing now that prevents consumptives from landing. Could you not have some regulation about that?

Mr. SARGENT. We do it now under this provision here, of dangerous and contagious diseases. In that way in most all instances the person is denied admission on the ground that he is suffering from a dangerous or contagious disease. The Marine-Hospital Service has a certain regulation covering that, when, by a microscopic examination, they find such disease exists, and they deport them all. But in my judgment it would be proper and necessary that the disease be specified in the law, because then the people who are afflicted with that disease would know that they could not be admitted to the United States, and they would not come.

Right here, I want for a moment to impress upon you gentlemen's minds what I regard as absolutely necessary in the interest of those people, as well as in our own interests, and that is to prohibit coming to this country, if it is possible to do so, people who can not be landed under the law. There are certain classes of people to-day who are excluded from this country. They can not come in if they come here. We excluded last year 11,000 of those people and sent them back. We are sending them back every day. Yesterday's report showed that we sent out of New York 28 people who have been found here, not entitled to land.

Mr. BURNETT. Is there any practical way by which they can be weeded out on the other side?

Mr. SARGENT. Yes. Place your medical officers at the place of embarkation, just as we have in the Orient to-day; just as we should have at every port where immigrants leave for the United States. Have the United States Marine-Hospital Service search them and pass upon the physical qualification of all those people under your act, so that they will be stopped there and not brought here.

Mr. BONYNGE. Is there not a question that arises on that subject about our jurisdiction on the other side?

Mr. SARGENT. That question might arise at the present moment, but is it not possible for this Government, by treaty regulation and otherwise, to have medical officers of the United States Government stationed at those ports, as well as consular officers?

Mr. BONYNGE. Yes; but do you not think it will require some treaty arrangement or agreement with foreign countries before we will have any effective regulation of the emigrants on the other side?

Mr. SARGENT. I do not know about that, but I am of the opinion that the steamship companies themselves are sufficiently influential to bring that about if an effort was required on their part by law provided by Congress, which should necessitate medical inspection at the port of embarkation.

Mr. BONYNGE. Do you not think that in the end we would arrive at a better solution and a permanent solution if we would have a commission appointed by the President to deal with commissioners of foreign countries and enter into a treaty arrangement with the governments sending their immigrants to us—regulating the immigration generally? Ultimately do you not think that is what we will require?

Mr. SARGENT. I think that is what is necessary to be done at the present time, and that is why I have recommended it in my report.

Mr. BONYNGE. I introduced such a bill, and had it referred to the Committee on Foreign Affairs.

Mr. SARGENT. It seems to me that if we can have a medical officer at the port of Naples, for instance, debarring diseases there, and if we can do the same thing at Yokohama and Kobé and Nagasaki to-day, why can not we do it at other ports in Europe?

Mr. BENNETT. You have that in some ports of Europe to-day?

Mr. SARGENT. We have at Naples.

Mr. BENNET. The report of the Allied Charities Association, of New York, contains a recommendation that there should be a surgeon of the United States Marine-Hospital Service on board of every steamship bringing immigrants. Would that be possible?

Mr. SARGENT. That would depend upon how much authority he had on that steamship. If he had official authority, no doubt he would do a great deal of good, and he would observe the physical condition of the passengers on the way over, and in the event of a disease breaking out on shipboard he would be in a position to promptly communicate those facts to the officers on this side on their arrival.

Mr. BENNET. Would it not be perfectly feasible and legal for us to pass a law providing that any steamship landing immigrants at our ports should carry such a man, because we have control of this end of the line?

Mr. SARGENT. I presume so; but I am not sufficiently qualified in maritime law to express an opinion on that.

Mr. BENNET. We could do that from our control of this end, I think.

Mr. SARGENT. Of course we can pass laws excluding anybody we see fit; we can keep them out of the country. But what has always appealed to me so strongly, particularly since I have been connected with the service, is the condition of those people who are brought here from the interior of Europe and who land here absolutely penniless and we have got to send them back, and for that reason I have always contended that if it was possible to enact a law that would make the inspection at the port of embarkation, so far as the physical conditions of these people who have a right to land are concerned, it would be in the interest of humanity to do it, and I do not understand how any nation could object to a provision of that character that is in the interest of their own people, because those people who come here from Russia, or any of those countries, that we deny are sent back. Some foreign country has to take care of those people who are sent back.

Mr. BELL. How is the expense of deportation met?

Mr. BONYNGE. By the steamship company. They have to pay all the expense of carrying them back.

Mr. BENNET. And that condition exists up to three years after an alien lands—

Mr. HAYES. Two years, under the present law—

Mr. BENNET. Yes.

Mr. HAYES. I wanted to ask, before you passed this subject, whether or not you think that a simple provision of law authorizing you to designate officers of your department as officers in foreign countries would raise the question in such a way that authority could be con-

ferred to appoint surgeons or anybody else on that basis, or what provision of law would you suggest to cover the point?

Mr. SARGENT. I think if a law of that character should be passed, it should be in such a manner as to guarantee to this country that there would be no opposition on the part of foreign governments, and then the appointments should be made the same as appointments are made at the present time, either by the President or the head of the Department on the recommendation, perhaps, of the Commissioner-General of Immigration.

Mr. BONYNGE. But you can not give them that guaranty unless you have a treaty arrangement with the foreign country.

Mr. SARGENT. It is along that line that the matter has been brought up for conference, in order that this may be all arranged.

Mr. BONYNGE. Yes; by conference with the foreign nations.

Mr. SARGENT. Two years ago this matter was taken up through the State Department. Correspondence was had with many of the governments of Europe as to whether or not they would object to stationing medical officers at the ports of embarkation. Nearly all of the governments responded favorably. One or two objected. China objected, and I think one European country objected. But the correspondence was largely favorable. We were simply, then, working upon the proposition that we had the authority to send officers to foreign countries, the same as we had done in Japan.

Mr. HAYES. What suggestion do you make in regard to the much-noted proposition to include those who are totally illiterate?

Mr. SARGENT. If you want to reduce the tide of immigration materially to the United States, a provision of that kind will be very helpful, because under the provision of a bill which I have seen, which was introduced, I think, by Senator Lodge—if that bill had been in operation we would have reduced the tide of immigration over 200,000.

Mr. GARDNER. Now, just there, General, I am inclined to take issue with you. The 239,000 you mentioned was the total number of illiterates who could neither read nor write, over the age of 14?

Mr. SARGENT. That is their answer. If you apply the test you would find it would be largely increased.

Mr. GARDNER. What I wanted to ask your opinion on to-day is this: All the evidence we accumulated in the last few years as to the method of distribution of tickets and the practical way in which emigrants are induced to come to this country tended largely to show that they are induced to come by relatives who keep a boarding house going out there, or by the sale of tickets. Would it result in an absolute falling off of the total amount of that immigration? Or would it result in the ticket seller in a place, say, like Harput, finding that we have a law which forbids him to import Mr. Ardisinian, substituting Mr. Krikoran, or something like that. You understand what I mean? It seems to me the field seems almost limitless. Although we might gain a superior citizen by the fact that he can read or write, would it not be in a great measure the substitution of one immigrant for another in a large proportion of cases?

Mr. SARGENT. How would you substitute if you have a law requiring a man on his arrival here to read a certain passage of your Constitution in his own language or write his signature intelligently? I do not see how you could substitute.

Mr. GARDNER. I will give you an illustration. Say I am a keeper of a Greek boarding house in Peabody, Mass. I have read the law, and I go out, and when I call together my bunch of 50 I must get people who know how to read. Now, I do get people who know how to read, and those who do not know how to read are left. My point is that I get my 50 all the same, but I will have to take more pains to do it. It will not cut down the bulk of immigration, because those importers of contract labor will simply substitute in the country of origin a man who can read for a man who can not read.

Mr. SARGENT. Yes; but if I understand your illiteracy test, it is to prevent the admission of any alien to the United States who can not read nor write, and that will be determined at the time of his inspection on the line. Here come your contract laborers, 50 in number; they can already read and write, according to the test submitted to them at the time of their inspection. If there were any of their number who could not read and write, they would be debarred.

Mr. GARDNER. That would be evident. You considered it would have cut down our immigration substantially last year, between two and three hundred thousand.

Mr. SARGENT. I say it would be if those same individuals had attempted to enter the country.

Mr. HAYES. Mr. Gardner's point is that the people interested in securing this immigration would see to it that the same number come and then would shift their culling-out process to meet the requirements.

Mr. BENNET. There would be a million last year, but of a different kind.

Mr. BURNETT. Would there not have been a better class?

Mr. GARDNER. I think they would, Mr. Burnett.

Mr. SARGENT. I suppose it is desired to reduce the number of immigrants coming here?

Mr. GARDNER. That is my point.

Mr. SARGENT. Very well. Last year there were 230,832 over 14 years of age who were unable to read, according to their own declaration.

Mr. BELL. Nearly a fourth of the immigration?

Mr. SARGENT. Yes. Now, a test applied would naturally increase that number who would be excluded, because there are a great many people in this country who, if asked, "Can you read and write?" would say "Yes," and then if subjected to a test, you would see the difference; so that if these aliens were all tested who came here last year, in all probability it would have reached a larger number of illiterate. But we only get their answer as they make it on the manifest sheet. I know of many instances where the test was applied in the board room, where the alien said he could read and write, and when asked to do it he could not do it.

Mr. GARDNER. There is no man, I think, no intelligent man, who believes that the 239,000 represent the total number of illiterates who came to this country last year. But the point I raise is this: If they knew the test, would not the importers substitute some one who could read and write instead of the 239,000 who could not read and write?

Mr. SARGENT. Are we not improving our immigration by virtue of the requirement of the illiterate test?

Mr. GARDNER. I quite agree with you, General; I simply took issue with your statement about the reduction of numbers. I want to see the immigration improved, but I also want to see it diminished.

Mr. BURNETT. Those who can not read and write would stay at home, more of them?

Mr. SARGENT. Yes. As I understand, in certain sections of Europe the number of illiterates is very large. That is shown in the illiterate chart here.

Mr. GARDNER. I supposed, when I came into the room, that you were making a plea for the inspection of foreign ports.

Mr. SARGENT. I was making no plea. I was stating to these gentlemen what I thought ought to be considered in connection with the excluded classes.

Mr. GARDNER. Now, I want to ask you as to the inspection at the port of debarkation, whether you think that is a humanitarian measure, or that those who are landed at Ellis Island—

Mr. BENNET. You said debarkation—

Mr. GARDNER (continuing). I meant to say embarkation. Is that a humanitarian measure? My purpose is to inquire this: Here is Ellis Island [exhibiting rough sketch], and here are various ports through which the immigrants come. The question in my mind is not whether the inspection is not necessarily more satisfactory there than there [indicating]. When you spoke in New York you put it on humanitarian grounds. If you had inspectors abroad you would save these people coming right out there [indicating], where, when they had seen the American flag, they would be turned back; by your inspection abroad you would save them that disappointment. Now, would that merely save a certain amount of heartbreak, or would it cut off immigration to some extent?

Mr. SARGENT. I do not know that it would diminish the immigration to any great extent except in this particular: If it were known that the immigration inspection at the point of embarkation restricted those coming to persons not of excluded classes such as are set forth, there would be a great many people, such as now come to this country, who would never start—people who now depend upon the influences set to work after their arrival to get them landed; and knowing that the inspection would take place at the port of embarkation, they would hesitate about starting for America, knowing that the rules and regulations were enforced strictly at Havre, or Hamburg, or whatever the port might be. Now, instead of that, they depend upon the influences in the United States to get them landed after they reach here.

Mr. GARDNER. How many times were the reports of the board of special inquiry overruled last year?

Mr. SARGENT. I presume in 50 per cent of the cases.

Mr. GARDNER. Making how many admissions that would otherwise have been excluded?

Mr. SARGENT. If you have a copy of my annual report here I can soon give you the figures.

Mr. HAYES. Here is one [producing copy].

Mr. SARGENT. The fact of the matter is that a great many of these people who come here depend to a large extent on the influences at home to get them landed.

Mr. BURNETT. Do those influences have that effect, sometimes?

Mr. SARGENT. I think so.

Mr. GARDNER. That is what I wanted to find out.

Mr. SARGENT. Out of the total number at Ellis Island, 1,353 appeal cases—that is, appealed from the board of inquiry—686 were dismissed and 667 were sustained. The total number of appeals, taking the whole country, was 1,921. The total number dismissed was 1,017, and 904 were sustained—that is, they were landed.

Mr. GARDNER. That is only a thousand out of a million that came in—only a thousand came in over the protest of a board of special inquiry?

Mr. SARGENT. Yes.

Mr. HAYES. I want to ask you, General, before we leave this subject and before I forget it, a question, because I think it is necessary to get a clear idea of this proposition: Suppose we had such an illiteracy test as you are talking about, would many people be debarred or prevented from coming that now come, who would make desirable citizens?

Mr. SARGENT. Oh, yes.

Mr. HAYES. What proportion?

Mr. SARGENT. I can not say what proportion, but you must understand that a great many good people come in from Europe who can not read and write. We have lots of them at home in our own country.

Mr. HAYES. Not many where I came from.

Mr. SARGENT. Take the statistics shown by the Census Bureau, and it will show you quickly where the illiteracy is. There are a great many good, steady, substantial people who come to this country who would not be admitted if you were to apply the illiteracy test. Some of their children can read and write, but their early education has been neglected. They themselves have never learned to read. They have grown up to manhood and womanhood without any education.

Mr. HAYES. You do not care to express an opinion of the proportion?

Mr. SARGENT. No; I do not care to express an opinion without some idea of the proportion. I presume I could figure that out, taking the statistics and making a calculation.

Mr. HAYES. It is also true, is it not, that a very large number who are not desirable from our standpoint should be excluded?

Mr. SARGENT. There is no question about that.

Mr. BONYNGE. Is their undesirability due to the fact that they might become citizens and exercise the right of suffrage?

Mr. SARGENT. No.

Mr. BONYNGE. On what ground would they be undesirable?

Mr. SARGENT. I believe it is very desirable that everybody should know how to read and write. If you are to apply the illiteracy test, it is because we want to improve the standard of our citizenship and want our citizenship to be intelligent. I think it is especially essential that the man who comes to this country should be in a position to read intelligently and learn the laws and understand what is required of him as a citizen, whether he becomes naturalized or not; and it is an advantage to have an education, and it is an advantage to any community to have all the people able to read and write.

Mr. BONYNGE. Is not the main objection to the admission of illiterates based upon the fact that they may afterwards become citizens and exercise afterwards the right of suffrage?

Mr. SARGENT. I had not understood that to be the only motive in the illiteracy test. I have been informed by those with whom I have talked on the subject that it was believed that by applying an illiteracy test you would bar out the largest number of undesirable people in certain countries in Europe where illiteracy largely prevails.

Mr. BURNETT. Very little of it exists in the countries of northern Europe?

Mr. SARGENT. Not so very much.

Mr. HAYES. As a matter of fact, would it not exclude in some cases half the immigrants we receive from the southern part of Europe, of those who came to us last year from the southern European countries?

Mr. SARGENT. It would have excluded a large number of them.

Mr. BENNET. Now, I want to ask you a question in line with Mr. Gardner's question about appeals. Did those appeals that were sustained include those where the commissioners at the various ports recommended that the appeals be sustained?

Mr. SARGENT. In some instances. In some other instances the commissioners recommended against the appeals.

Mr. BENNET. I mean that 50 per cent. Does it include the cases where the commissioners recommended that the appeals be sustained?

Mr. SARGENT. Yes; it includes their recommendations as well as the final decision. Sometimes I recommend that an appeal be sustained myself against the commission or the board of inquiry.

Mr. BENNET. You mean for the benefit of members who do not live at immigrant stations? Please detail the manner in which these appeals are taken from the board of inquiry, including the subsequent hearings. I have been all through it myself, and so has Mr. Gardner, but perhaps other members of the committee have not.

Mr. SARGENT. You understand, first, that the right of the alien to come into the country is passed upon primarily by the inspector on the land before he comes. If for any reason he thinks there is doubt about his admissibility, he marks him "S. I." He then goes before a board of three men, who are supposed to be very capable and good judges as to the rights of people to come into the country, and there he is given a hearing. There all the facts are brought out in connection with his coming to this country. Sometimes he is given two or three or even four hearings. As the witnesses come, their testimony is given. Now the board's final conclusion is reached, and he is notified that he has the right of appeal to the head of the Department in Washington, to the Secretary. If he so chooses he makes his appeal in writing to the commissioner, and it is required that the papers and evidence or testimony shall be sent on to Washington. It is required, also, that the recommendation of the commissioner at the port accompany that appeal, and a letter expressing his views and opinions. That is viewed by the Secretary of the Department and the Commissioner-General, and they are confirmed or set aside.

Mr. BENNET. Immediately, when the commissioner has the matter before him and has to make his recommendation, is it not the usual practice for him to send for the immigrant, if he is liable to become a public charge, and look him over, and is not the commis-

sioner permitted by the prevailing practice to have new evidence introduced before him, which all goes up to the Department, together with the evidence taken by the board of inquiry?

Mr. SARGENT. All of it is presented to the board of inquiry. The commissioner makes his recommendation or orders a rehearing, if in his judgment there is evidence sufficient to warrant it.

Mr. BURNETT. And the new hearing is down there?

Mr. SARGENT. It is before the board of inquiry, and oftentimes before the commissioner himself.

Mr. BENNET. Your report, if you will pardon me, Mr. Commissioner-General, stated just the opposite, because it states that these appeals are practically new trials, and that that is the trouble with the present system of appeals; that it is not an appeal, but a new trial. I know from personal experience that you can get in new evidence.

Mr. SARGENT. If you want to go back to last July, when I wrote that report, I should have to agree that you are pretty nearly right; but if you want a statement of the method that has been followed later, since that report went out, you will find that instructions have been issued which require that this evidence shall all go before the board of inquiry.

Mr. BENNET. You see we had only the report. We can only take the report.

Mr. SARGENT. That report was published for a purpose, and it has been accomplished. Now, the case goes back for a reopening and review by the board of inquiry.

Mr. BENNET. We would not have known that if we had not brought it out here.

Mr. GARDNER. Now, as to these influences that they rely upon to get them into this country, of course I am a politician, and a good deal of that sort of thing comes up for such assistance as I can give it. I never have an appeal come my way until after the action of the board of special inquiry. That is to say, any of the nefarious proceedings that I myself have gone through [laughter] were always connected with the case after the board of special inquiry had rejected the immigrant and his case had there been appealed or was about to be appealed from the district commissioner; and in those cases I have seen political influences step in. That is the reason I asked how many got in here through the extreme influence of politics, and I find that less than a thousand out of a million got in last year by any form of political influence. Even if you say any appeals are sustained on account of political influence, I want to add that I never had any success whatever in the additional help that I gave in trying to get appeals granted. [Laughter.]

Mr. BONYNGE. I believe I did. Did not my man get in. [Laughter.]

Mr. SARGENT. I believe the record will show that I did not use the words "political influence." I did not intend to, at any rate. But talk about political influence, and how it is used. Go to the port of Boston, for instance. A short time ago there came to the port of Boston a young boy and a young girl. They had arrived from Liverpool, and they were both of them afflicted with trichoma, a disease which is barred from this country, as you know. There they were taken by a party—taken in Liverpool by a party to a boarding house,

where they were treated for a certain period of time, and during the time they were being treated a certain party by the name of Dantzić, who was around this boarding house, made some inquiries of this boy and girl as to their going to America and their destination. He said to them: "If you go to the United States and tell them there that your father and mother are in Russia, you will not be permitted to land, but I have a friend in New York, and I will write a letter to him, and he will go to Boston, and there he will appear as your brother, and you will tell the immigration officers that your brother is coming to meet you, and when this man comes you will take the name of Forsythe."

Their name was Silverman. But he said: "You take the name of Forsythe, and Mr. Forsythe will meet you in Boston." So they came to Boston as Forsythes, and on the morning of their arrival Mr. Forsythe, of New York, appeared and told his story very straightly, and the boy and girl told theirs. But there was this peculiarity in the statement of Mr. Forsythe: He did not seem to have any particular knowledge of the family history of the other Forsythes. All he knew was that there was a boy and girl there by the name of Forsythe, and that he was their brother. Shortly afterwards it developed in the mind of the commissioner and myself—I happened to be there that morning—that the fellow was lying. He was taken up to the district attorney's office, and he is now doing nine months in Charlestown jail.

The facts were these: This man Dantzić used this man in this country as the representative of immigrants from Europe who were desirous of coming to America and were deterred by the conditions, one thing and another, and he would write over here to fix up arrangements whereby these people could be landed; and these influences are worked to-day at every immigrant station in America. People are induced to come here by people interested in getting them from over there and into this country, and all kinds of fictitious evidence is produced at the immigrant stations. Relationship is claimed by people who are of no relation whatever. That is the influence I spoke of that is used to bring undesirable people into this country.

Now, if undesirable people were stopped on the other side by our own officers, these influences could not be used over here. That has no reference whatever to politics, and that is what I referred to. I could relate to you case after case of that very character, where the influences are constantly at work. Such influences are used right here at home, right here in Washington; not on the part of politicians, but on the part of people who are interested here in getting certain people into the country.

Mr. GARDNER. I telephone Mr. Billings, the commissioner in Boston, and say that I am called up by a very reputable tailor, Mr. Stearn, whose nephew and niece, for example, are held up here. I happen to know about Stearn and telephone to him, and Billings will telephone back and say, "Oh, they are all aunts and sisters." [Laughter.] They do not take any stock in these stories, you know. They are all shut down.

Mr. SARGENT. If these people were rejected on the other side and not permitted to come to this country, we would not be annoyed by these influences over here.

Mr. RUPPERT. Who is this man Dantzie?

Mr. SARGEANT. A man who runs a boarding house in Liverpool and goes to the ships on the sailing days and picks up all the immigrants of a certain class who are rejected there by the steamship doctors, and takes them to his home and employs four doctors in treating them until they are in such condition that they can come to America.

Mr. BURNETT. Where does he get his influence?

Mr. SARGEANT. In this case, the letters, as we found on examination of Forsythe's effects at the sheriff's office, directed him, Forsythe, to collect \$30 from this boy and girl before he permitted them to go on to Philadelphia.

Mr. BONYNGE. What other additions to the excluded classes do you recommend?

Mr. SARGEANT. They are set forth there; all idiots, imbeciles, feeble-minded persons, epileptics, insane—persons who have been insane five years—

Mr. BONYNGE. You would change that to persons who had been insane at any time?

Mr. SARGEANT. You would catch a good many. There would be no harm to it. Also persons afflicted with loathsome and contagious diseases, including tuberculosis.

Mr. GARDNER. The difficulty would be to get a diagnostician for tuberculosis.

Mr. SARGEANT. We are getting them every day, and excluding them right along, by microscopic examinations, producing certain effects; those are what the Marine-Hospital Service now exclude. We get a great many. If that is put in the law, my idea is that they will not bring them to this country.

Mr. BENNET. Do you think we would exclude more if we had more physicians at Ellis Island and other stations, where the examination could be more slowly conducted?

Mr. SARGEANT. Yes, sir; you could. If you take more time in your medical inspection and make a more critical inspection, there is no question but what you can pick up a great many who are undesirable and who, under a critical inspection, would be denied admission. It is unreasonable to suppose that you can pass 6,000 people between daylight and dark and give critical inspection to their condition.

Mr. GARDNER. That is used as an attack upon our Marine-Hospital Service.

Mr. BENNET. I am not using it that way.

Mr. GARDNER. I want to know, is it not a fact that Commissioner Williams had 10,000 immigrants at one time inspected stripped, and thoroughly stripped?

Mr. SARGEANT. Not in my time, and I have been in the service three years and six months.

Mr. GARDNER. It was so stated to me by Mr. Williams—10,000 immigrants, as an experiment to see how nearly the percentages of certifications corresponded, the 10,000 successively. I will state it as Mr. Williams told it to me. I asked about it last summer, when Commissioner Williams was no longer there, and I verified the report that we had got the year before when we went down as a committee. As I understand it, they inspected 10,000 immigrants stripped. They found that the percentage of certifications varied not at all from the

average number of certifications—that is, the certifications for some defect, physical, varied not at all from the averages obtained by examining them with their clothes on. Now, Mr. Commissioner, I would be very glad if you would say whether that statement is accurate or not. I spent some time with the Marine-Hospital surgeons and discussed that with them in New York and also in Boston.

Mr. BURNETT. How many posts have you?

Mr. SARGENT. For the Atlantic coast States we have one at Portland, Me.; one at Boston, New York, Baltimore, Philadelphia, Norfolk, Savannah, New Orleans, and Galveston; and on the Pacific coast, San Francisco and Seattle; and also at St. Johns, New Brunswick.

Mr. BENNET. Is it now an offense to bring an alien in except through one of those ports?

Mr. SARGENT. Yes.

Mr. GARDNER. If the committee has no objection, I would like if the Chair would address a letter to the Secretary of the Department of Commerce and Labor, asking him as to the accuracy of that statement made to me.

Mr. SARGENT. I can imagine what sort of an excitement that would create, the stripping of 10,000 emigrants at Ellis Island.

Mr. GARDNER. I would like to find out what degree of truth there is in it.

Mr. BURNETT. Is there any means of finding that out? I understand a great number of immigrants come in at New York.

Mr. SARGENT. Yes.

Mr. BURNETT. Is there any means by which they could be better distributed, so that they could go south and elsewhere if they desire?

Mr. SARGENT. If the steamship lines would run to Galveston or Savannah, landing at the gateway where there is claimed to be a large demand for immigration, I think it would be of great advantage.

Mr. BURNETT. Is there any way of compelling such distribution?

Mr. BENNET. Would the steamship lines try to run a line to New Orleans? I understood from some source that a project of that kind had been taken up in the last eighteen months.

Mr. SARGENT. The Italians have run a line there. In the year three ships, I think, came in. I understand they are now arranging to run a monthly line there. We have made arrangements for a station to accommodate the reception of them there.

Mr. BURNETT. Those are steamships leaving Italian ports?

Mr. SARGENT. Yes; bringing Italians only.

Mr. BENNET. I suppose you are perfectly willing to make arrangements and have new stations wherever there is a demand?

Mr. SARGENT. Yes.

Mr. BENNET. You have authority to do that?

Mr. SARGENT. Yes; to lease buildings. We have done that at El Paso, Tex. We are going to do that at Galveston too. The steamship companies say they are going to run a regular line to Galveston in the hope of stimulating immigration to that port. We have no facilities there now. We have to do all our work on board ship.

Mr. BURNETT. I notice that commercial interests in Alabama are asking that a station be established at Mobile. If the steamships

themselves do not come to the ports from northern Europe I doubt if we would want Italians only.

The CHAIRMAN. Do you favor the increase of the head tax? What is your opinion of that?

Mr. SARGENT. It would raise the rate of transportation between Europe and the United States, and unless it was raised to quite a considerable proportion it would not have any effect. I notice one bill introduced in the Senate raises the head tax \$20. Of course that would mean the raising of the transportation charged by that much, and would of necessity prevent certain people from coming here who would not be able to raise the amount necessary to buy a ticket.

Mr. BURNETT. If that money should be appropriated for the more efficient operation of the system, would not that give you more funds from which to employ more aids?

Mr. SARGENT. Oh, yes; it would give more funds, and the funds could be used to make improvements at all ports of entry.

Mr. GARDNER. Is it not true that the present head tax brings in more than you use?

Mr. BENNET. And then Congress appropriates?

Mr. SARGENT. Yes.

Mr. GARDNER. Each annual report shows a larger balance in your favor?

Mr. SARGENT. I will give you the figures in just a minute. I think I have them here. We have plenty of money.

Mr. BENNET. As I understand it, you can not use it until Congress appropriates it?

Mr. SARGENT. Our total receipts for the last twelve months were \$2,170,275.81, and our expenditures were \$1,554,171.55.

Mr. BENNET. That is a surplus of \$600,000.

Mr. SARGENT. That does not represent it all.

Mr. HAYES. When the immigration is heavy that piles up that surplus?

Mr. SARGENT. Yes. At the close of business on the 31st of December we had an unexpended balance of \$2,400,858.78.

The CHAIRMAN. Are the improvements at Ellis Island paid for out of this fund?

Mr. SARGENT. Yes, sir; the fund is used for the maintenance of the entire service.

Mr. GARDNER. There is a bill in here for a \$40 head tax, and there is every kind of a head-tax bill. Now, as a matter of fact, do you not think that a very large proportion of the labor that comes to this country comes under an implied contract?

Mr. SARGENT. I do not think there is any question about it, Mr. Gardner.

Mr. GARDNER. And do you not think that all charges are paid directly or indirectly by the contractor that imports them—that is to say, the labor agent or the boarding-house keeper?

Mr. SARGENT. I can only judge from the answers we get from the aliens themselves. They always claim that they pay their own passage.

Mr. GARDNER. They are instructed to say that. If the contractor were required to pay \$40 more he would keep that laborer a great

deal longer in his control before he can work out the \$40; and as a matter of fact do you not find from experience that it is only a certain length of time that they can keep the laborer under their control, anyway, and that when they get familiar with the laws, or join a church, or something of that kind, very soon they get out from under their control and go and live in another boarding house? My opinion is that with a higher head tax you take the price out of the contractor.

Mr. SARGENT. I guess that would be true.

Mr. GARDNER. Mr. Hopkins, of Kentucky, has introduced a bill which provides that every immigrant coming to this country shall show to the inspector \$25. To what extent do you approve of that?

Mr. BONYNGE. That has been gone over before.

Mr. GARDNER. Oh, I beg pardon.

Mr. SARGENT. I said, in answer to questions before you came in, that I thought every alien coming to this country should have a sum of money in his possession. I did not specify a certain sum, but I think it is advantageous that a man who comes to this country should have at least sufficient money to feed him some few days.

Mr. GARDNER. Would not these importers of contract labor simply hand a man a little more to show to the inspector than they do nowadays?

Mr. SARGENT. I do not know that it would cut down the amount of immigration; but if they came here with money in their possession, we would not have to retain them for several days till they got money.

Mr. GARDNER. You do not think it would necessarily cut down the number of immigrants?

Mr. SARGENT. Not to any great extent.

Mr. BONYNGE. Have you any plan of distributing the immigrants throughout the country?

Mr. SARGENT. I have my notions about it.

Mr. BONYNGE. What plan is it?

Mr. SARGENT. I believe the Bureau of Immigration could establish bureaus of information at its stations where reliable information could be given of opportunities in the different sections of the country for settlement, or employment, or the purchase of land. There are a great many aliens who come here who have no fixed destination except New York. That applies particularly to laboring men. If you ask them where they are going, they will say, "To our friend in New York." That means that when landing in New York his friend is going to try to find him employment. We have a great many of such cases at Ellis Island, to whom we say, "What are you going to do?" They answer, "Anything that I can get to do." They want work.

I believe if we were privileged to establish a bureau of that character, and then get information from reliable sources as to where labor could best be employed, and where there is opportunity to settle, we would aid a great many of those people to go out into those sections where it would be to their advantage to go. After we have been working along those lines for a short time these people whom we would send out to different sections of the country would be a great help to others in that locality, because the immigrant who comes here is usually coming to his friend. His friend has written to him to

come; he has written him saying that there is plenty to do over here in this country, etc.

Mr. GARDNER. Does that meet your ideas? I tried to draw that on your suggestion as contained in your annual report [submitting bill].

Mr. SARGENT. This is along the line I suggested.

Mr. HAYES. I drew a similar one.

Mr. BENNET. If you have all this money, do you need Congressional action?

Mr. SARGENT. Certainly. We need the authority to establish a bureau of that character. The law gives us no authority now, except to pass upon the right of the alien to come to this country.

Mr. BENNET. In regard to this money, that \$2,000,000 balance, has your Bureau or Department the absolute right to spend that money, or is it appropriated by Congress?

Mr. SARGENT. We spend that money by virtue of the annual appropriation made by Congress for the expenses incident to the Immigration Service, and then we are allowed to improve our stations, and make alterations and repairs, and to carry on the general service of the Bureau. Of course, when we build a building, or want to do anything of that kind, we come to Congress for the appropriation, and it is made out of this fund.

Mr. BENNET. So that although you have that \$2,000,000 fund you have not the disposition of it unless Congress authorizes it?

Mr. SARGENT. We could not do this without special authorization.

Mr. BONYNGE. Should not that information be given them at the port of embarkation as well as after the immigrants arrive here?

Mr. SARGENT. Yes. It is merely a suggestion on my part as to what I believe, from observation, can be done to the advantage of the immigrants who come to this country, as well as to the advantage of the country itself.

Mr. BONYNGE. Would it be necessary to raise the head tax to give you funds sufficient for the bureau at the other side as well as on this side?

Mr. SARGENT. If you are going to enlarge the service to a great extent you must make provision for the maintenance of the funds.

Mr. BONYNGE. So that your present head tax would not meet the maintenance of a bureau of that kind that would be very useful unless we increased the head tax?

Mr. SARGENT. If we had the large immigration that we have been having for the last two or three years, I think it would be sufficient; but if your immigration drops off, as it is liable to do at any time, we would not have sufficient funds. Of course it does no harm to have plenty of money on hand at all times. Sometimes, you know, your receipts are less than your expenditures. It would not take long to eat up our surplus.

Mr. BONYNGE. Is there any way now to deport an alien when you discover he is guilty of perjury in his attempt to gain admission into the country?

Mr. SARGENT. Yes; we can arrest him upon a warrant, and if we find that he has perjured himself we can deport him.

Mr. BONYNGE. I had a letter from Mr. Patton, in Boston, saying they had discovered some person who had entered through perjury, and there was no provision by which they could deport him.

Mr. SARGENT. You ask Mr. Patton to send me a letter on that subject, giving the details.

Mr. BONYNGE. The man referred to was a Syrian.

Mr. HAYES. There is no law now that would allow an alien to be deported who is found in an almshouse, for instance, unless it can be established that the cause that brought him there existed prior to his coming to this country. Is that so?

Mr. SARGENT. Yes.

Mr. HAYES. Do you see any objection to covering that ground so that any alien who becomes a public charge may be deported?

Mr. SARGENT. In considering that proposition, what attitude is your foreign government going to take when you send these people back?

Mr. BONYNGE. Yes; if they are all right when they come here.

Mr. HAYES. But they are not our citizens. We are not obliged to take care of them.

Mr. SARGENT. If they become public charges owing to conditions which existed prior to their coming here—suppose it was due to conditions here at home? I would like to see it done. I would say yes.

Mr. HAYES. Suppose one of our citizens goes to Germany or any other place, and while there he becomes a public charge. Do you suppose there would be any hesitation there to send him back?

Mr. SARGENT. No; but you would not refuse to accept him.

Mr. FRENCH. Would an employment bureau tend to greatly encourage the immigration, and would it not remove the obstacles that now prevent many people from coming to this country—the uncertainty of finding employment? Would they not consider that as an encouragement and an incentive to come, and thereby increase greatly our immigration?

Mr. SARGENT. No doubt it would increase our immigration; but I am presuming that you are going to provide some means that only the right kind of people shall come here—the people that are wanted. We have room in this country for an immense immigration if you can only direct it in the right localities. This country has nothing to fear from immigration if it is the right kind of immigration; but you want the right quality of immigration, and you want to try to get it to come where the best advantages are afforded for it.

The CHAIRMAN. Gentlemen, it is now 12 o'clock, and the committee will stand adjourned until next Tuesday morning at 10.30 o'clock.

(Thereupon the committee adjourned.)

COMMITTEE ON IMMIGRATION AND NATURALIZATION,
HOUSE OF REPRESENTATIVES,
Washington, D. C., February 27, 1906.

The committee met this day at 10.30 o'clock a. m., Hon. Benjamin F. Howell in the chair.

The CHAIRMAN. Gentlemen, we will now proceed. Where did we leave off with Mr. Sargent last week?

Mr. FRENCH. We were discussing the idea of having provision made for the dissemination of information concerning conditions throughout the United States for the benefit of prospective immigrants.

Mr. HAYES. A bureau of information.

Mr. FRENCH. Yes; a bureau of information, you might say.

The CHAIRMAN. Mr. Sargent thought if we had some means whereby the different States needing immigration could make that condition known a good many desirable immigrants could be obtained.

Mr. ELLERBE. We are very much interested in that down our way. We are anxious to secure a good class of immigrants in many sections of our State, and we have a commissioner who is paid a regular salary, and an appropriation is made to defray his expenses, to look after that very thing, and our people are very anxious for something of that kind. If we could get those immigrants down in the section of our country where we want them it would be a great help to us.

The CHAIRMAN. I do not know of any reason why such a bureau should not be established.

Mr. BONYNGE. Perhaps it would be well to have Mr. Campbell state what that bureau could do and how it could be organized.

The CHAIRMAN. Yes.

STATEMENT OF MR. RICHARD K. CAMPBELL, OF THE BUREAU OF IMMIGRATION.

Mr. CAMPBELL. From my observation and according to my understanding nearly all the immigrants that come here to this country come with a fixed destination already entertained in mind before they start from the other side.

Mr. BONYNGE. Could we not furnish information at the point of embarkation, so that that information would be disseminated in the foreign countries?

Mr. CAMPBELL. Yes; I think that would be the best method. That is the method used by the Pacific railroads.

The CHAIRMAN. Would that not encourage immigration?

Mr. CAMPBELL. I think it would.

Mr. GARDNER. I understand it is illegal for the transportation companies to disseminate information like that. Their wicked partners can do it, and do do it, but they can not do it themselves.

Mr. CAMPBELL. Yes.

Mr. ELLERBE. Is it not true that those companies are trying to get the immigrants to come here regardless of where they are going?

Mr. CAMPBELL. There is a good deal of information in the Department on file to justify that conclusion, but the difficulty is to bring it home to the transportation lines, to establish the fact of agency abroad. The person who directly encourages immigration on the other side is the agency for the transportation lines here.

Mr. ADAMS. Have you any plan whereby this distribution of information could be developed in Europe?

Mr. CAMPBELL. I was going to say that it seems to me that any plan to be effective must begin its operations on the other side, because every one of those people are destined to some particular point or place. They do not, as a rule, come here with a view to landing first at one place and ultimately finding a permanent residence elsewhere.

Mr. ADAMS. I mean in what way could our Government act to the best advantage in the foreign countries?

Mr. CAMPBELL. I do not think our Government could officially. It is a matter of individual enterprise. I refer to the operations of the railroad companies. I do not think our Government could engage in things of that sort. I think we would get ourselves into international complications that would prove embarrassing.

Mr. HAYES. Is it not true that half, or perhaps more than half, of the immigrants come to New York City and have not money to go anywhere else and have no idea of going anywhere else?

Mr. CAMPBELL. A great many have no idea of going anywhere else, both those with and those without money, because they have compatriots right there in New York. They usually have national societies there. The immigrants know people in many cases, and in other cases, if they do not actually know people, they know of them and expect through them to secure assistance. I think Mr. Sargent's reports show the fact that nearly all the different nationalities of foreigners have their societies there.

Mr. HAYES. Has not almost every annual report contained some statement of that kind because of the tendency of the immigrant to stay where he first lived, as I might say, and being entirely ignorant of our country and of its resources he simply stays right where he lands and immediately becomes a competitor of the labor that is already there?

Mr. CAMPBELL. It is not so much a matter of stopping where he lands as coming intentionally to stop there. In all the large cities, particularly in New York and Boston, they come to those cities to take their chances right there with their compatriots. The only way I know to obviate that difficulty and overcome it is to prepare their minds before they come here.

Mr. BONYNGE. Would it not be possible to secure that preparation of their minds by having our consuls furnish that information on the other side which they could furnish to the people there?

Mr. CAMPBELL. No; I do not think that would have any practical results.

Mr. BONYNGE. Could not that information be disseminated among those starting for America?

Mr. CAMPBELL. If you are going to wait until they start, a better plan would be to establish bureaus of information here at the principal ports.

Mr. GARDNER. Is it not your opinion, Mr. Campbell, that in a very large proportion of cases before a man starts to break up his home, say, in a little Syrian town, he not only knows that he is going to America, but he also knows that some man will meet him and tell him where he is going to work when he gets here?

Mr. CAMPBELL. I think he has some definite assurance that he is going to be taken care of in a sort somewhere.

Mr. GARDNER. Perhaps two-thirds of our immigration comes in under a contract, either express or implied.

Mr. CAMPBELL. I do not know about two-thirds, but a large part of our immigrants are coming in with some sort of assurance.

Mr. GARDNER. In your opinion, could any amount of information given out by the consul at Harput, for example, of a general nature, compete for one moment with the definite information which the Armenian who lives out in the country near that point can give

him, that he is going to a boarding house that he will be given the address of?

Mr. CAMPBELL. I think that the definite and particular information acquired on the other side determines the ultimate place of settlement of aliens before they leave foreign soil. I want to say, Mr. Chairman, that I have been expressing my own personal views. I understood I was asked for them. The Bureau of Immigration is convinced that the Government can accomplish something in the way of distribution by authorizing the establishment in New York and perhaps in Boston and others of our principal ports, but first in New York, of a bureau that would be devoted to the dissemination of information among the newly arrived immigrants as to the resources of the different sections of our country, and at each bureau the States would respectively be allowed to have their agents or representatives and have the opportunity given through those agents to exploit their particular States in the way of labor, for example, and the opportunity to purchase land, and the advantages of settlement, etc.

Mr. GARDNER. You have often been to Ellis Island, Mr. Campbell?

Mr. CAMPBELL. Yes.

Mr. GARDNER. Did you ever see an immigrant, after he passed the line of inspectors and had gone downstairs, who was looking for general information or gave evidence of the need of particular information? Are they not always either looking for some particular person or else in charge of some man who is going to take them ashore and lead them somewhere?

Mr. CAMPBELL. They very often are. I would say in the majority of cases, of those who might be regarded as dependents, that is the case. You take a woman, a young woman who is coming here, or a very old woman for that matter, or an old man or a child, they are not allowed to leave the station until some responsible person comes for them to take charge of them. Of course that rule does not hold good with able-bodied men, capable of working for a living.

Mr. GARDNER. When the able-bodied man gets down there he knows just what railroad he has got to get his ticket on, if he is going outside of New York?

Mr. CAMPBELL. An officer conducts him to the railroad to see that he gets his ticket on the train of the right railroad to take him to his destination. The destination is on the manifest.

Mr. GARDNER. The moment these people land in New York, if they did not know where they were going, we would see them collecting confusedly on the street, whereas, as a matter of fact, they do not do that, but are disseminated and scattered at once, and in five minutes the street is just as empty as if you and I and our friends were to land. That circumstance shows very clearly that they all know where they are going.

Mr. ELLERBE. Our commissioner from South Carolina has been to New York on two or three trips for this very purpose and has succeeded in bringing quite a number of immigrants into South Carolina.

Mr. GARDNER. Do you not suppose he went to some agent instead of going to the immigrants themselves?

Mr. ELLERBE. That is getting beyond where I can answer.

Mr. HAYES. I want to ask you your personal opinion, Mr. Campbell. If such a bureau were established, where reliable information

could be disseminated, do you not think a great number of immigrants would come to rely upon the information of that bureau as to the best places at which to secure employment?

Mr. CAMPBELL. I think that is perfectly reasonable.

Mr. ADAMS. If they knew anything about it?

Mr. CAMPBELL. That opinion is postulated upon the statement that they had found out that it was reliable.

Mr. BONYNGE. If it were a Government agency, established and conducted as the Government should conduct it, it would be reliable.

Mr. ADAMS. I have not the slightest objection to this matter, but I do not see the practicability of it—how they are going to know.

Mr. HAYES. They would get the information from the officers of the immigration bureau as soon as the bureau is established, and it would furnish this information; and a few of their countrymen would find that it was reliable information by having acted upon it and having found it to be so, and then through them that fact would be disseminated all over Europe that there was such a bureau.

Mr. ADAMS. You mean by correspondence?

Mr. HAYES. Yes; and through newspapers and every other means of disseminating information.

Mr. CAMPBELL. In further answer to the question asked a moment ago by Mr. Gardner—

Mr. ADAMS. This would facilitate the getting of employment on this side, and the localities would be pointed out; and a man instead of having to get information as to how he can live when he gets here is going to have that information provided for him by the Government, and he will come over on the strength of that, whereas I understand our object is to decrease immigration.

Mr. HAYES. Decrease the wrong kind, but promote the right kind.

Mr. BONYNGE. If there are places desiring this information to be given to the foreigners, is there any objection to the foreigners having it?

Mr. ADAMS. No; but this is certainly in the direction of making it easier to come in. I am not opposed to this, but I just want to have it worked out. All enterprising men—the kind of men who would make the best class of citizens here—would have enough intelligence and energy to seek out that information independently for themselves before they come. Those would be the kind of men that make good citizens. It is the drone that relies on the Government to take care of him and will rely on the Government to find out where he can get work.

Mr. HAYES. I disagree with you almost entirely on that. The most enterprising man will find it almost impossible to get that information alone, and he will say, "I will take my chances at New York and find out when I get there."

Mr. RUPPERT. I had occasion a few years ago, going from Washington to New York with a number of friends, to observe a case of that very kind. They landed the immigrant at the Jersey Central Railroad station in Jersey City, and this immigrant that I speak of got on board a Jersey Central boat going to New York, and members of our party spoke to him. He had thirteen or fourteen children and his wife—a whole fleet of them. [Laughter.] We asked him where he came from and where he was going. He told us. He said he had \$20,000 and intended to settle somewhere in America, but

he did not know just where. He was going to some hotel in New York, and then he intended to find out the best place to locate in a farming district, but at that time he had no information at all. He came into New York at 9 o'clock at night, at West street. If there had been such a bureau, he would have got the information he needed without going to New York at 9 o'clock at night.

Mr. HAYES. Yes. He would have bought his ticket and gone to his destination without going to New York at all.

Mr. BONYNGE. Of what nationality was he?

Mr. RUPPERT. He was a German.

Mr. HAYES. The best immigrants we get are of that kind.

Mr. GARDNER. You do not get many with \$20,000 in their pockets. If you did that you would bring up that \$50 average pretty quick.

Mr. RUPPERT. There were some New York members of Congress on board the boat with him when they were coming over.

Mr. GARDNER. I want to ask you some questions, Mr. Campbell, if it is in order now, with respect to the figures of those who can not read and write. The figures that are put out on cards by various restriction leagues indicated, by the report of 1904 and that of 1905, that 239,000 last year and 171,000 the year before of over 14 years of age could not read or write. Your report did not read that way, because it said it is presumed the remainder, 640,000, can read and write. You must presume that all those other than the 239,000 can read and write.

Mr. CAMPBELL. We ask them certain questions—if they can read and write, etc.

Mr. GARDNER. Read that [submitting document] and you will see that that puts the total number of those who could read and write at 640,000.

Mr. CAMPBELL. The table says "those who can read and write" and "those who can neither read nor write."

Mr. GARDNER. Take the table at the bottom of a page, there [indicating]. I wanted to know the facts, whether those figures were representative of all the number over 14 years of age who could read and write, or whether they included everybody. See if you have not accorded literacy to everybody except those 239,000.

Mr. CAMPBELL. Those figures refer only to those of 14 years and over.

Mr. GARDNER. Go on. Presumably 640,000 could read and write. That must presume that everybody under 14 could read and write.

Mr. CAMPBELL. That is clearly a mistake, because the figures only refer to those who are 14 and over. The difference would be between those illiterates and the number over 14, and not between those illiterates and all the other arrivals.

Mr. GARDNER. I made some figures from that, assuming its accuracy, and was pounded by the immigration-restriction forces on those figures, and therefore I say your report is incorrectly worded.

Mr. HAYES. In other words, there should be deducted from those who seem to be able to read and write those under 14 years old?

Mr. CAMPBELL. Yes. That seems to be a mistake.

Mr. GARDNER. Yes; it is very unfortunately worded in this year's report, but not quite so bad as that. However, that is of no importance so long as that is the fact, if these figures exclusively refer to those over 14 years of age.

Mr. CAMPBELL. Those figures in regard to literacy are like many other figures that are given. They were given without any attempt at verification.

Mr. HAYES. Yes; very probably many who claimed to be able to read and write can not.

Mr. GARDNER. I quite understand.

Mr. BONYNGE. I would like to ask you what form of restriction, Mr. Campbell, do you think should be placed upon immigration—so that we can get your views on the subject?

Mr. CAMPBELL. It seems to me the restrictions contained in the bill introduced by Senator Dillingham would cover the ground. There are a great many arrivals at the port of Boston, particularly of Greek children, that come over sometimes in large shipments of several hundred each.

Mr. GARDNER. There were only a thousand of them altogether.

Mr. CAMPBELL. Yes; comparatively few last year; but there are many large shipments still arriving, as a matter of fact, not merely of Greeks, but Italians as well.

Mr. GARDNER. Four hundred and forty-six of Greeks last year under 14 years of age.

Mr. CAMPBELL. I think the year before there arrived at the port of Boston in one shipment five or six hundred.

Mr. BONYNGE. What is the provision of Senator Dillingham's bill as to that?

Mr. CAMPBELL. That is to deny admission to all children under 14 years of age unless they are accompanied by their parents, or are going to join a parent, or unless, in the event of death of a parent, they are coming here to join a brother or sister who is able and willing to care for them.

Mr. ADAMS. Are many coming in under such conditions without their parents?

Mr. CAMPBELL. Very many come in, and it is very difficult for us to ascertain what proportion of them come in without their parents, because a great many adopt parents for the occasion. That is the only reason why it seems to me that that may be a defective measure. It is very hard to tell about them. We have met with frequent instances where families were distributed among two or three heads, with the apparent intention of reducing the probability of the family appearing to be likely to become a public charge.

Mr. GARDNER. There were 605 Greek boys arrived the year before who were under 14 years of age.

Mr. CAMPBELL. Yes; I merely attempted to illustrate the point by referring to Greek boys. There are a great many of other nationalities as well.

Mr. GARDNER. Senator Dillingham's bill is what I call a selective bill, designed to improve our immigration, just as all these bills that imply or involve a more strict examination and that are designed to increase the difficulty of an imbecile getting in and men of poor physique. All this would reduce the immigration only by a very small percentage.

Now, there are some of us who would like to see measures passed that would strike down immigration, say, strike off one-half, whether in accordance with the idea of Mr. Adams, by restricting the number coming from each country in a given year, or by the method proposed

by Mr. Hopkins, who wants to see them have \$50 in their pockets, or by the plan of those who want a large head tax, or of those who want an illiteracy test. I presume that you are rather of the President's point of view, which is that nothing except bad immigration, that will not stand the mental, moral, and physical tests, should be excluded.

Mr. CAMPBELL. You are entirely correct. That is my position.

Mr. GARDNER. However, would you give an opinion as to the best method of restricting it—by the plan of those, for instance, who hold my opinion—and that is that you want to slash it?

Mr. CAMPBELL. The best way to do that is the one that has been tried in the Dominion of Canada in regard to the Chinese. They have provided that only so many shall be carried as shall bear a fixed relation to the tonnage of the vessel on which they come. That is absolutely without distinction as against any country or race or nationality.

The CHAIRMAN. It does not affect the condition of the immigrant either, does it?

Mr. GARDNER. They have a \$300 head tax, have they not, on the Chinese?

Mr. CAMPBELL. In the last two or three years they have had a \$500 head tax on the Chinese, but I understand they intend to return to the \$50 rate.

Mr. GARDNER. I suppose they found that the \$500 head tax was killing the goose that laid the golden eggs.

Mr. BONYNGE. Does Canada have a general head tax?

Mr. CAMPBELL. No, sir; I believe she has no general head tax. She is encouraging immigration in many ways. I have seen figures of the per capita cost of every alien she has received for years.

Mr. GARDNER. It is splendid immigration.

Mr. CAMPBELL. Yes; they send their agents abroad; and it is the only effective method; and they not only have a choice of the aliens, but they take them into such parts of Canada as enable them to become prosperous.

Mr. BONYNGE. How do they do that?

Mr. CAMPBELL. They have agents—government officers—to indicate what is desired to the immigrants on the other side.

Mr. BONYNGE. You suggested a while ago that we might get into difficulty if we did that.

Mr. CAMPBELL. Yes; but if you take the relative size of the two countries it might be accounted for on that ground. The total immigration of Canada is comparatively insignificant.

Mr. GARDNER. They are deliberately going to work to get immigration. A man arrives in Winnipeg and goes to the government agency. That is a regular intelligence office. It has a complete list of unoccupied lands in Manitoba. In Ottawa an immigrant can get lists of all the unoccupied lands in Manitoba, Alberta, Assiniboia, Athabasca, and Saskatchewan. But you ought to see the difference in the people they get from ours. I have seen women come in there with little notebooks, taking their luggage and getting their tickets—intelligent, self-posessed, up-to-date; just as smart as a Yankee girl. It is just the difference that there is between chalk and cheese.

Mr. WOOD. What is the total immigration to Canada?

Mr. CAMPBELL. It is relatively insignificant.

Mr. HAYES. Probably a hundred thousand.

Mr. CAMPBELL. They have been getting a great deal of immigration from this country.

Mr. GARDNER. I think more than half of their immigration comes from the United States.

Mr. ADAMS. This law of Canada as to the ratio between the ships and the number of immigrants only applies to the Chinese?

Mr. CAMPBELL. Yes. I only spoke of it as a practicable method of accomplishing Mr. Gardner's plan.

Mr. GARDNER. You do not think favorably of the head tax?

Mr. CAMPBELL. No.

Mr. GARDNER. Is it practicable to prevent the Chinese from getting into this country from the Mexican border?

Mr. CAMPBELL. I do not think it is. It is an irregular line of 1,500 miles or more. The Rio Grande River is dry most of the time. I was at El Paso last winter, and—

Mr. GARDNER. Do you mean that 500,000 immigrants could come in over the Mexican border?

Mr. CAMPBELL. No.

Mr. HAYES. Could 1,000 come in that way?

Mr. CAMPBELL. The Chinese are coming in there, notwithstanding all the efforts we can make to keep them out.

Mr. HAYES. Could 1,000 come over?

Mr. CAMPBELL. I think so.

Mr. HAYES. They would have to tramp it.

Mr. GARDNER. Have we not inspectors in Mexico?

Mr. CAMPBELL. We have on the Mexican border.

Mr. GARDNER. And in Mexico also?

Mr. CAMPBELL. No.

Mr. GARDNER. You have in Vancouver and Montreal.

Mr. CAMPBELL. We have them in Canada by agreement with the Canadian railroad officials in return for protection to the companies from delays at the border. They agree they will not sell tickets to aliens without their first undergoing inspection by our immigration agents.

Mr. GARDNER. I think we could police the boundary of Mexico if we wanted to and if we got down to it.

Mr. CAMPBELL. It is a different boundary from the Canadian boundary. It is a difficult proposition.

Mr. BONYNGE. Would increasing the head tax ten or twenty dollars have the effect of diverting immigration to contiguous countries.

Mr. CAMPBELL. I think it would. I hardly think there is a doubt that it would.

Mr. BONYNGE. Even increasing it to \$10 would?

Mr. CAMPBELL. Yes.

Mr. FRENCH. Would the idea involved in Mr. Adams's bill have that effect, too—that is, limiting the number that could be brought to this country from any foreign country, say to 80,000? That would bar out more than half of those that are brought in from some of the southern countries of Europe, and would still permit those to be brought in from the northern countries.

Mr. CAMPBELL. Of course, to some extent a restriction placed upon the number of arrivals at our seaports would tend to divert that immigration to foreign contiguous territory.

Mr. GARDNER. I do not see how altering the rates would accomplish it. What is the rate of tonnage now? Is it $4\frac{1}{2}$ tons, or something of that sort?

Mr. CAMPBELL. I do not know. But it is provided for in the passenger act.

Mr. GARDNER. I think it is $4\frac{1}{2}$ tons, or something like that.

Mr. CAMPBELL. I think it has varied.

Mr. GARDNER. But I do not see, if they are going to run the tonnage up, as in the case of the Chinese, how you could prevent it.

Mr. CAMPBELL. Any restrictive measure would tend to divert the immigration that now comes directly to our ports. I answer directly your question as to the result of an increase of the head tax.

Mr. GARDNER. Do you know what the rate of fare is to the most usual South American port—say, Rio, Brazil?

Mr. CAMPBELL. I can not recall, sir.

Mr. GARDNER. I think the rates are about \$15 higher than to our ports.

Mr. CAMPBELL. I do not think there is a great deal of difference.

Mr. GARDNER. It is between \$10 and \$15. I think the rate to Rio is about the same from Liverpool as to Sydney. That in itself is a \$15 head tax from the point of view of the man who wants to get in traveling labor. I am assuming that a large part of the southern Italian immigration is simply of traveling laborers. It is not immigration at all in the true sense of the word—what Mr. Brown characterizes as “Saxon-gainers.”

Mr. CAMPBELL. They are birds of passage.

Mr. ADAMS. The Italians in Brazil, I understand, go out there and stay permanently. The climate suits them. They are taken out to the coffee plantations, and they settle there, and, as a rule, they remain. They take their families with them and settle there, and do not go back and forth as they do here. I understand they are away back in the interior, some distance back in the interior, and they settle there; and they provide homes for them, and they become a part of the permanent population. It is the same with the Italians in the South.

Mr. BONYNGE. Even if we were to establish the educational test, it would have the effect of diverting some of the immigration?

Mr. CAMPBELL. Yes. Any restriction whatever would have that effect. I was looking at the question from a more practical standpoint, and I ought to mention the increase of the head tax. I think if that means with you a restriction, there would, perhaps, be more opposition to it than to any other means. The direct and immediate effect of it would be to divert travel.

Mr. HAYES. Is it not a fact that any other restriction—prostitution, or anything else—would have the effect to drive them to the borders.

Mr. CAMPBELL. I think it would be more so in the case of the head tax.

Mr. HAYES. Why?

Mr. CAMPBELL. Because a great many would take the chances.

Mr. GARDNER. You mean fight from the transportation companies?

Mr. CAMPBELL. Yes; I do. I mean resistance.

Mr. GARDNER. Are not the transportation companies going to fight anything that restricts immigration? If we cut off an ear or a mustache they will introduce methods that will be calculated to get

around it. You must first take the soup before we get to the meat. Have we not got the transportation companies to fight if we are going really to cut immigration down?

Mr. CAMPBELL. If you are going to cut down the number, regardless of the character of immigration, then you are going to fight them at a disadvantage.

Mr. GARDNER. If you could show some method which would enable us to get better immigrants and at the same time cut them down without cutting out lots of good immigrants, it would be very interesting to hear the suggestion. I have heard many suggestions made, but so far I have heard no practical suggestion.

Mr. ADAMS. I was going to ask Mr. Campbell, on the hypothesis advanced by Mr. Gardner that we are going to do something to restrict immigration, what do you think of the bill reported last year from this committee for restricting the number from all countries, which in its practical working out affects the southern countries in Europe and reduces the immigration from there and leaves it open from the countries of northern Europe?

Mr. CAMPBELL. As I stated a while ago, I thought the better measure was the pro rata measure according to the tonnage of the ship. That has been practically tried. But it seems to me that the other measure would be good too from the standpoint of the Bureau. It is not a question of cutting down the immigration, because we are satisfied that this country needs immigration of a desirable sort. One of the members of your committee states, and states correctly, that the Southern States—and some of you people say also the same with respect to the Western States—that they require labor, particularly agricultural labor. I do not know how many millions of acres of good lands are idle in the Southern States that could become the homes of thrifty people, but the difficulty is that people who might go there are now stopped from one cause and another in the large cities, and instead of scattering and going into such localities they go right into the sweat shops and stay there.

Mr. GARDNER. If you could put them there, would they stay there?

Mr. CAMPBELL. It is not so much a matter of getting higher pay, but the question of their capacity to support themselves abundantly. The cost of living is one of the elements. I think the members from the Southern States will confirm the statement that you can live there in great comfort at comparatively small expense. The land is cheap there. The land is fertile and the garden is very productive.

Mr. ELLERBE. There is no doubt about that. Immigrants come down in our country first as laborers, and they buy their land if it is cheap, and they raise truck and small fruits, and live in comfort with a small outlay.

Mr. ADAMS. Don't you think 750,000 immigrants a year would be about as much as 80,000,000 of people could absorb and distribute? Mind you, this is not for one year only. We are providing now for all time, and my own idea has been that this country can absorb and distribute about 750,000 immigrants per year, or somewhere about that, because from 500,000 to 750,000 are what have been coming into this country for many years, and as the country grows it is able to absorb more and more. But now immigration is jumping at such a rate that if we do not do something to restrict it we will get more im-

migrants than we can possibly absorb and distribute. To my mind that is the great point we have got to meet. That is the object of restriction. I do not think anybody wants to cut off immigration entirely. Nobody says laborers are not needed in this country. The demand for labor is now jumping up rapidly.

Mr. BONYNGE. Is not that largely due to the prosperous times we have been having in this country for a number of years past?

Mr. CAMPBELL. We have no data to show the number of immigrants who depart from the United States. The reports show that on the average 500,000 immigrants arrive annually. I am inclined to think the average of arrivals has not exceeded the number stated by Mr. Adams.

Mr. GARDNER. The steerage passengers going out include American citizens. Say there are 340,000 people going out each year, or whatever the number was said to be; that included American citizens, naturally. But you forget that none of your figures show, or pretend to show, the number of those that come over the borders surreptitiously. You simply show the head tax paid in your reports. You do not show the number of French Canadians who come down to my country and work in the shoe shops. You do not include those who come over the Mexican border surreptitiously and are not accounted for—those coming from Mexico and Canada in that way. Those are not shown in your figures. But if they were, you would find you had nearly a million who came in last year.

Mr. BENNET. Mr. Campbell said, taking a number of years back, it would not average over 500,000.

Mr. HAYES. It was some years ago since the immigration was less than 500,000.

Mr. GARDNER. I read in the Manufacturers' Record, of Baltimore, recently that some gentleman of the South started a discussion and had a symposium from the South, manufacturers and others, and I read carefully all the answers. It was last July—July 27; the Manufacturer's Record, of Baltimore. I was struck by the circumstance that almost everyone of them said, "We do not want Italians," and lots of them said, "We have tried to get immigrants and have got them, but they will not stay." I know in South Carolina you have a lot of mills there that are finding it hard to get operatives, because cotton is now worth 10 or 11 cents a pound, and they go back and plant cotton; and they tell me down there that they want immigrants. If they paid wages which, in view of a cheaper cost of living there, would yield as desirable a subsistence as is the case in Fall River, would not they get migration instead of immigration?

Mr. ELLERBE. There are certain sections there where labor is scarce, and when cotton is low in price those people flock to the mills. When cotton is 10 or 11 or 12 cents a pound they leave the mills and go back to the farms. What we want is to restrict the undesirable class and get a class that will come in there and develop those lands and stay there and own little homes and become desirable citizens.

Mr. GARDNER. My point is that migration will take care of that if you give them an economic advantage over what they have somewhere else.

Mr. BENNET. Mr. Gardner means if you raise the salaries in the mills you will get men from the North.

Mr. ELLERBE. There are people down there who have come from other sections, people who are growing fruits near Abbeville, and growing strawberries; people who are shipping as much as 180 carloads in a day. Those people are doing well. They are coming over into several points in my section of country—people from the Northwest. That is happening right now.

Mr. GARDNER. I was trying to indicate that this immigration, if there is an economic demand for it, will adjust itself.

Mr. ELLERBE. In my State they try to arrest the departure of negroes and stop the negroes from going out; and from that statement you will see how badly we want to retain that labor. That is an actual fact.

Mr. HAYES. Suppose this Congress passes a restriction measure which, as you say, would necessitate a larger police force along the borders, if you were to keep them out, and suppose we pass an educational test requiring an examination of each alien, which would take, of course, more help at the various immigration stations to carry on that work. In that case, I ask you if the present head tax would provide for all the expenses necessary under those conditions?

Mr. CAMPBELL. I doubt it very much.

Mr. HAYES. How much more would it take?

Mr. CAMPBELL. That is a matter that would depend very much on the immigration.

Mr. HAYES. You have not any idea then?

Mr. CAMPBELL. No, sir; I have no definite idea. I have not considered the matter.

Mr. WOOD. From what other sources does opposition come to the restriction of immigration besides the transportation companies?

Mr. CAMPBELL. I do not know that it comes from any other source.

Mr. WOOD. Are you in favor of an educational test?

Mr. CAMPBELL. No, sir.

Mr. WOOD. What are the grounds for your opposition to it?

Mr. CAMPBELL. My grounds are both upon the administrative score—the difficulty of establishing any educational test and practically applying that test without an enormous expenditure and delay in handling the immigrants, with possible congestion at the ports. Then I have another objection to it. I by no means think that an educational test is any guaranty as to the moral character or desirability of the population that we admit. Some of the best people I have known in this country, some of the most thoroughly patriotic citizens, and some of the most useful men—men who respect labor and are willing to work with their hands and who believe in the dignity of labor—have been men without any particle of education.

Mr. HAYES. I want to ask you, then, for what are we spending hundreds of millions of dollars a year in this country to educate our citizens?

Mr. CAMPBELL. That is on the theory that a necessary part of our educational system is to enable the voter intelligently to cast his ballot. Whether he does it or not I do not know.

Mr. HAYES. You think, judging from your statement, that it is a mistake to educate men who work with their hands.

Mr. CAMPBELL. I think that gratuitous education, as it is applied to a great extent in this country, is a measure to encourage mendicancy and to discourage independence. In my own native State of

Virginia I do not know of a time when a youth who really wanted an education could be prevented from getting it. I am aware that I may be giving utterance to opinions that are deemed heretical.

Mr. ELLERBE. In communities where there are thousands of children who do not go to school they would not get to know the character and purport of our institutions.

Mr. CAMPBELL. The question is whether they do or not.

Mr. WOOD. Can you give us any idea of the proportion of illiterate immigration?

Mr. CAMPBELL. The statement is made here in the annual report, and my attention has been called to the fact that it is a mistake, that 640,000 people over the age of 14 were able to read and write and 239,000 over the age of 14 were unable to read and write. The figures as to the 640,000 admitted in that one year are disputed, as including a large number under the age of 14, who, it is presumed, could not read and write.

Mr. WOOD. An educational test would restrict immigration, probably, to the extent of 25 per cent?

Mr. CAMPBELL. It would depend upon the kind of restriction you imposed. If you are going to require that they shall read and write four lines of the Constitution of the United States, I do not think it would restrict them for a great while. [Laughter.]

Mr. BENNET. They would soon learn it?

Mr. CAMPBELL. Yes.

Mr. ELLERBE. Are you not in favor of some very strict law that will go just as far as we can go toward keeping out every undesirable immigrant?

Mr. CAMPBELL. Decidedly.

Mr. ELLERBE. If we can not have an increase of the head tax and an educational test, how can we do that?

Mr. CAMPBELL. You can enlarge the list of undesirable aliens so as to cover any conceivable class, and require their exclusion, naming the character and qualifications of the aliens themselves. You could not discriminate for a moment against one country in favor of another.

Mr. HAYES. You think, then, Mr. Campbell, that an alien who could not read and write, whose parents never could read or write, whose people came from a long line of uneducated ancestors, would be just as desirable as an educated immigrant?

Mr. CAMPBELL. No, sir; I never thought such a thing. But it would be a mistake to assume that the uneducated immigrant, from the mere fact of his lack of education, is undesirable, or that the educated man, from the mere fact of his being educated, is desirable.

Mr. HAYES. But take an individual who can read and write and take another of the same character and grade and intelligence who can not. Which would you prefer?

Mr. CAMPBELL. I can answer that frankly. It would depend very much on where they are educated. I tell you the most dangerous classes we get from Europe are educated men. They are educated under a wholly different system from ours.

Mr. HAYES. They are leaders, so to speak. If it were not for the ignorant classes here for them to work on, their avocations would very soon be gone, in my humble opinion.

Mr. CAMPBELL. It is not the ignorant classes of our citizens, our own citizens, but the ignorant classes of these aliens whom they work upon.

Mr. HAYES. That is what I think.

Mr. WOOD. Is your view of the educational matter the view of the Bureau as well?

Mr. CAMPBELL. I do not think I could state positively. Mr. Sargent has indicated that several times as one of the means of restricting immigration; that some kind of an illiteracy test should be established. I do not understand that he distinctly recommended it; I think he merely suggested it.

Mr. WOOD. Did he express himself positively in the matter?

Mr. BONYNGE. I think at the last hearing he said he was in favor of it.

Mr. CAMPBELL. I think he rather favors additional tests.

Mr. HAYES. Is it not the opinion of the Administration—I mean the President of the United States—has he not repeatedly expressed in his messages a recommendation that we should restrict immigration and adopt an educational test?

Mr. BONYNGE. When?

Mr. ADAMS. He has only said that the immigration should be restricted to a good class of immigrants.

Mr. HAYES. In his first message to Congress he distinctly recommends that we should have a good class of immigrants. I am just appealing now to our Republicans. Remember that our party platform in 1896 came out squarely and stood for the same thing.

Mr. WOOD. Did the Commissioner, when he was here, express himself as having positive views at the last meeting?

Mr. BONYNGE. That is in print.

The CHAIRMAN. Has the Bureau any recommendation to make whereby they believe the undesirable classes can be kept out?

Mr. CAMPBELL. The Bureau, I think, has presented a bill that is very similar to the Dillingham bill.

Mr. WOOD. What is the number of that bill, Mr. Campbell?

Mr. CAMPBELL. I do not know that that particular bill which was prepared by Mr. Sargent was ever introduced.

Mr. HAYES. I have a bill here which embodies every recommendation that he made to me.

Mr. WOOD. Then the Commissioner-General proposes entirely the Hayes bill?

Mr. HAYES. Yes; except as to one thing that he has notified me of since my conference with him. Upon second consideration he doubts its wisdom. He says we might have trouble with foreign governments.

Mr. BENNET. About inspectors abroad?

Mr. HAYES. Yes.

Mr. ADAMS. Mr. Hayes, you are quite correct. The platform of the Republican national convention of 1896 was as follows: "For the protection of the quality of American citizenship and the wages of our workingmen against the fatal competition of low-priced labor, we demand that the immigration laws be thoroughly enforced and so extended as to exclude from entrance to the United States those who can neither read nor write." But I do not think you are right on the President.

Mr. HAYES. It was in his first annual message.

Mr. FRENCH. It is on page 3 of that little pamphlet which you have. Here it is [indicating]:

First. We should aim to exclude absolutely not only all persons who are known to be believers in anarchistic principles or members of anarchistic societies, but also all persons who are of a *low tendency* or of unsavory reputation. This means that we should require a more *thorough system of inspection abroad* and a more *rigid system of examination at our immigration ports*, THE FORMER BEING ESPECIALLY NECESSARY.

Mr. GARDNER. If the bill had gone into effect last year, do you know how many immigrants it would have shut out, in number? That is, the Dillingham bill—the Administration bill.

Mr. CAMPBELL. I doubt if it would have materially affected it.

Mr. GARDNER. Would it have cut down the immigration by 50,000?

Mr. CAMPBELL. I do not think so.

Mr. GARDNER. Do you think it would have diminished the immigration 25,000?

Mr. CAMPBELL. I doubt that. It might have cut it down a few thousand.

Mr. GARDNER. Do you believe in the Dillingham bill?

Mr. CAMPBELL. Yes; with that one exception mentioned a while ago, about locating our immigrant inspectors abroad to make inspections. I do not think that is necessary or desirable. That refers, however, to immigrant inspectors, not to medical inspectors.

Mr. WOOD. I understand that bill is virtually the bill of the Bureau—that one presented by Senator Dillingham?

Mr. CAMPBELL. Yes, sir.

Mr. BONYNGE. I think you will find that in your mail this morning.

Mr. BENNET. That is the Penrose bill.

Mr. BONYNGE. I want to ask Mr. Ellerbe whether those immigrants who go down there and go to work in the mills, and go out into these little patches and work them, are desirable classes of citizens or not?

Mr. ELLERBE. In a good many instances they stay and become valuable citizens.

Mr. WOOD. Was there not a bill involving an educational test that was passed by Congress and vetoed by President Cleveland?

Mr. CAMPBELL. Yes.

Mr. WOOD. What year was that?

Mr. CAMPBELL. Along in 1894.

Mr. GARDNER. In 1892.

Mr. BENNET. He was not inaugurated until 1893.

Mr. WOOD. Can you give any idea of how extensive that educational provision was?

Mr. CAMPBELL. I do not recall particularly; but it was in the line of all these other educational tests. It was a requirement that the aliens should be able, if over a certain age, to read so many lines of the Federal Constitution. That is my recollection. There have been a number of others since. I think Senator Chandler was interested in that bill.

Mr. GARDNER. I think that was Senator Lodge's bill. It is the same as the independent bill before our committee to-day.

Mr. CAMPBELL. I believe so. I think it has been presented a number of times.

Mr. GARDNER. I thought Senator Lodge was then in the House instead of in the Senate. That is the reason I put the year back.

Mr. BENNET. Mr. Chairman, inasmuch as the hearing seems to have become rather desultory, if there is no objection, I would be glad if Mr. Goulden should be accorded a hearing. I understand our colleague, Mr. Goulden, has come here at some inconvenience to himself personally to address the committee. Is there any objection to foregoing any further pursuit of this present line of inquiry?

The CHAIRMAN. I think not. We can hear Mr. Goulden.

STATEMENT OF HON. JOSEPH A. GOULDEN, A REPRESENTATIVE FROM NEW YORK.

Mr. GOULDEN. Mr. Chairman and gentlemen, I want only, with your kind permission, to call your attention to the bill which I introduced (H. R. 8460) "To amend the immigration laws and regulations approved March 3, 1903, entitled 'an act to regulate the immigration of aliens into the United States.'"

I had the pleasure of introducing that bill, and it is very easy and simple. Perhaps it does not cover the ground as comprehensively as Senator Dillingham's bill does, but it is the result of the recommendations made by one of the best men in the entire immigration system, Mr. Robert Watchorn, commissioner of immigration at New York. Mr. Campbell will say, I believe, that you have others as good, but no better. He has had an experience of eight or ten years in the immigration service.

Mr. CAMPBELL. Longer than that.

Mr. GOULDEN. Yes. He is a bright, intelligent man, and has been president of the miners' union. He is a practical miner himself, and therefore he is from the people.

The bill, you will notice, provides—

That in section two of the act of March third, nineteen hundred and three, after the word "idiots," insert the words "imbeciles, weak-minded and." After the word "disease," in the same section of the act of March third, nineteen hundred and three, insert the words "and those certified to be suffering from or found to be of a poor physique." In section nine of the act of March third, nineteen hundred and three, in line two, after the word "company," strike out the words "other than railway lines entering the United States from foreign contiguous territory."

It says, "foreign contiguous territory." Now, I want to say here that, living in New York City, as some of my friends do, my colleagues Mr. Ruppert and Mr. Bennet, and living there myself, I have given a good deal of attention to the subject, and I have visited Ellis Island repeatedly and spent days there. Before going there, and before coming to Congress, I was perhaps a radical of radicals on this subject of immigration. I was willing to put the bars up even more radically than my friend from Philadelphia [Mr. Adams], to the limit of 25 per cent, perhaps. But I have changed my mind entirely. As the President said, I think we want every good immigrant we can get.

We want them badly in New York City. We are not able to have any manual labor done there except by foreigners. I am sorry to say that. But having been familiar with the schools there, I know that the moment you educate a boy or a girl there, that moment they become above the performance of manual labor. We can not have a

foundation dug, or a street graded or regulated, or an excavation made by an educated laborer.

Mr. BENNET. You mean by manual labor, unskilled labor?

Mr. GOULDEN. Yes. We do not have enough labor there. This, of course, is the flood tide of our prosperity, and we need more people than we can get.

The children of those aliens come into our schools—I have watched the matter very closely for a number of years and have visited the East Side very many times, where 90 or 98 per cent of the children in the schools are foreign born—and I notice also that when the Government called for men to respond in behalf of Cuba and Porto Rico the foreign element were among the first to respond. I have been at the head of the Grand Army in Brooklyn, and I remember when we started recruiting sections—it may seem strange—that half, at least, of the young men who came forward and volunteered, young men who were the product of our schools, were either aliens themselves or the children of aliens.

There is no question about the work, the good work, which the schools are doing in this direction, but, as I say, it is unfortunately educating the young people above the level of unskilled manual labor.

Mr. HAYES. Why unfortunately?

Mr. GOULDEN. I say unfortunately because it is crowding the professions. When you educate a young man he wants to be a lawyer or a doctor. I do not see that we have too many of them, because we have on this committee a gentleman educated in New York City—my good friend from Colorado [Mr. Bonyng]—

Mr. BENNET. And educated in the college of the city of New York—

Mr. GOULDEN. Yes; and I know him very well: he is the product of our schools, and we are proud of him.

Mr. BENNET. You have another representative of the schools of New York in the person of Mr. Olcott, on the floor of the House.

Mr. GOULDEN. Yes. I had an interview with Mr. Watchorn not long ago, and his stenographer took it down. Here is what occurred [reads]:

MEMORANDUM OF INTERVIEW HELD AT ELLIS ISLAND, N. Y., DECEMBER 1, 1905
BETWEEN CONGRESSMAN GOULDEN, COLONEL KILLGORE, COMMISSIONER
WATCHORN, AND ASSISTANT COMMISSIONER MURRAY.

Mr. WATCHORN. In viewing this question of immigration too many people lose sight of the fact that out of every 100 aliens coming here 40 go back to the other side. Of the 60 remaining here out of every 100 some should not have been permitted to land.

The percentage of those who should not have been permitted to land is not large, but it is a dangerous percentage. I will cite a case: On the arrival here last Wednesday week of the *Oceanic* an alien passenger named Mary Mulvy was certified to be insane. We declined to take her from the ship. The steamship company said that the taking off of the cargo and the putting in of a fresh one would be very distressing to a person afflicted as she was, and asked permission to take her to a hospital. While she was in Bellevue Hospital awaiting the departure of the vessel upon which she would be deported (the *Oceanic*) a lawyer called here to assure the Government that if she were permitted to land her relatives at Schenectady were well able to and would take care of her. But the law is mandatory on the point of insanity, and there is no appeal from the excluding decision in such cases; therefore the case could not be opened. If insanity were not mandatorily ruled out by Congress Mary Mulvy's friends could have brought sufficient political influence to bear to have made her de-

portation extremely doubtful. In my opinion, all persons whose admission does not make for unqualified good to the United States ought to be mandatorily ruled out, just as insane persons and persons suffering from certain diseases are.

Now, take the case of a girl named Mary Kennedy. The doctors, upon her arrival here, certified that she was feeble-minded, and she was ordered deported. Her friends appealed, the appeal was sustained, and she was landed. She, in my opinion, is infinitely more dangerous to the community in which she will settle than Mary Mulvy, because the latter would be locked up in an asylum, whereas the Kennedy girl will be given a certain amount of liberty and there may be results from her landing which would not be a credit to any community.

I would add to section 2 of the act of March 3, 1903, after the word "idiot," the words "*imbecile and weak-minded.*" I would also add, "*those certified to be suffering from poor physique.*" There are certain other diseases or bodily ailments that might well be considered in this connection, but I am not prepared to believe that Congress would put them in the class of those mandatorily ruled out. I refer to those suffering from hernia, especially laboring men, who have to depend upon their physical exertions for daily earnings. Also those afflicted with curvature of the spine, who, according to medical testimony, are thereby disqualified to perform hard manual labor. If they are not fitted for any other occupation in life the unwisdom of their admission is obvious.

So long as it is possible for an excluded alien to *appeal* from the excluding decision it is very difficult indeed to *insure* deportation. Influence can be brought to bear in cases that are not mandatorily excluded.

You can see the force of that trend of argument. If a person is insane and Congress in its wisdom says that that person should not come into the country, how much greater reason is there for saying that a person who is feeble-minded should not come in? We exclude the feeble-minded, but they can appeal. The feeble-minded should be treated just as the insane now are. It should be made possible for the Secretary of Commerce and Labor to say: "The law forbids their admission."

MR. GOULDEN. Is there any way of cutting them out on the other side?

MR. WATCHORN. On that point I want to give you some very pleasing information. I took up with the steamship companies this matter of exercising care on the other side as to accepting certain classes of aliens as passengers at points of embarkation. I have sent them sample copies of the minutes of the "boards of special inquiry," covering certain excluded cases, and asked to have them sent to the European agents, urging them not to sell tickets to persons circumstanced similarly to those referred to in such minutes of the board. Here is the result. [Shows table of statistics.] In July of this year we deported 1,116; in August, 946 (it was in July that I commenced this work with the steamship companies and they commenced to work on the other side); September, 321; October, 233. In this connection the steamship companies report that since July last the number of would-be passengers who have been rejected by them at ports of embarkation in Europe have been over 5,000.

MR. GOULDEN. Should not those rejections be increased materially?

MR. WATCHORN. Surely.

MR. GOULDEN. How still further cut down the embarkation of undesirable immigrants?

MR. WATCHORN. One good way to do it is through fining the steamship companies for bringing here persons whom the law would keep out or who are excluded by law.

MR. GOULDEN. Is the fine imposed by the present law big enough?

MR. WATCHORN. I think so; it would be bad to have too big a fine; that would make it worth while for the steamship companies to employ big men to fight against the payment of such fines. The price of passage is \$30, and a steamship company is fined, for bringing here an alien who is rejected, \$100. That represents to them a net loss of \$70, and they return the alien to the country whence he came at their expense. If we can make it more profitable for the steamship companies to leave an unfit alien at home than it is to bring him here, you place on the transportation companies the onus of weeding out undesirable immigrants, and save us the necessity of sending paid agents to the other side to do what they ought to do. I touched on that point in my annual report.

(At this point in the interview Mr. Goulden and Mr. Watchorn read together section 9 of the act of March 3, 1903, pages 31-32 of the law, and discuss certain

phases of it and the desirability of altering it slightly. In this connection Mr. Watchorn says:)

Mr. WATCHORN. If an undesirable alien gets into an upholstered Pullman car in Canada and pays his fare, he can get into the United States without any trouble; if an undesirable alien gets into a farmer's buggy and is driven across the border into the United States, the farmer can be arrested and punished for his part in the transaction.

(Mr. Goulden and Mr. Watchorn speak of the term "other than railway lines" in section 9 of the act mentioned.)

(Mr. Watchorn reads from his last annual report those portions covering the points under discussion, also those parts referring to bonded cases, progeny of the feeble-minded, imbeciles, etc.)

Mr. GOULDEN. In cases where aliens already in this country appear here in behalf of newly arrived aliens, what guarantee have you from these relatives or friends already in the United States that they will fulfill their promises in this connection?

Mr. WATCHORN. We have no guaranty; we have their word. They bring their bank books with them (if they have any) or such proof as they may have at hand of their ability and willingness to aid the new arrivals.

Mr. GOULDEN. For what length of time after the arrival in this country can you deport?

Mr. WATCHORN. In some cases within three years, some two, some one year after landing.

Mr. GOULDEN. Are those periods long enough?

Mr. WATCHORN. I would make them all three years. I will tell you where a difficulty would come in in this connection. Suppose we land a man to-day. He goes ashore, gets a position, settles in a community, and takes unto himself an American wife. A year or two later he develops tuberculosis. We undertake to go and take him for deportation and find that by this time he has one or two American-born children. Can we destroy that home?

Mr. GOULDEN. There ought to be some way of reaching such a situation.

Mr. WATCHORN. Those are the danger points. When this comes up in Congress I hope they will not lose sight of that very important feature. Congress, in my opinion, ought to require every State to report to the Bureau of Immigration the admission of every alien to its jurisdiction. The great trouble is that the superintendents or managers of almshouses and other places of refuge are paid 40 cents a day, or some like amount, for each inmate of their institution, and their (the managers') remuneration must be derived from the profits accruing from the maintenance of these inmates, and if they report the presence of these aliens they are simply cutting off their own revenues, and instead of helping us to get them out of the country they, as a matter of self-interest, protect them.

A certain custom has grown up. A certain class of aliens, who have been here two or three years, put their wives and children in public institutions. They are reported and we secure warrants to cover those cases. Before we get them on board ship we find (if it is a woman) she has a husband here, he has declared his intention to become a citizen, is a householder, a taxpayer, and we are simply tearing a family apart in deporting in such an instance, but if he could leave his wife in that institution and have her cared for at public expense, the alien in question would be perfectly willing to allow it. There are hundreds of such cases, and the taxpayers in the various communities ought to make a move and inquire into these things.

Mr. GOULDEN. I want to ask one more question. Have you any general recommendations that you would make regarding restrictions of undesirable immigration other than those you have mentioned?

Mr. WATCHORN. No, sir.

Mr. GOULDEN. Now, will you repeat, please, what you said regarding the necessity of having large numbers of immigrants come to this country with reference to the labor side of it? I mean the necessity for a large immigration?

Mr. WATCHORN. If there were not a demand for that kind of labor, the supply would not be forthcoming. It would be absolutely foolish for people to come here and stand around with their hands in their pockets with nothing to do. For the digging of ditches, laying of ties, shoveling of coal, handling of ore and freight, for all this gross form of labor, such as stevedores do, you must of necessity import that labor. You have 18,000,000 children in your schools, from kindergarten to university. Allowing 5 years for each one as a period for

schooling, you will see how many you graduate annually, and you are educating your own people above the pick and shovel, and yet the work your children will do is absolutely dependent upon the work of the man who handles the pick and shovel. For instance, one of your young men will come out of school and he will become a locomotive engineer, but unless there is somebody to dig the coal, handle it and put it in the tender, how can he run his engine?

And you can not find one boy in 10,000 who had been educated in the United States who will go down into a coal mine and work. Out of 500,000 working in the coal mines in the United States, 400,000 are foreign born. You must import that class of labor. When you consider that when the population of this country was 40,000,000 it required an influx of 380,000 immigrants to fill the wants of the country, when the population becomes more than twice 40,000,000 you must have more than twice that number of immigrants to meet the requirements. It is a case of mathematical progression. But while this stream runs on, no matter how vast, it should be kept pure.

Mr. GOULDEN. Do these statements that you have made apply also to female immigrants—servants?

Mr. WATCHORN. Yes, sir; I do not know any more apt phrase or expression on this subject than that of the President of the United States in his last message to Congress: "We can not have too many good immigrants. We do not want any bad ones." That sums the whole thing up. Now, the question is to decide who are the bad and how to weed them out. But there is a false sympathy in this connection that is responsible for many errors—the sympathy that stands by and sheds tears when some most undesirable alien is sent back to the country whence he came; in many instances it is not only a justice to this country to reject arriving aliens, but it is frequently a kindness to the alien himself to be returned to his own country.

Mr. GOULDEN (continuing). The idea of these suggestions, I say, came from him, and it was to make it mandatory and permit no appeal whatever. I think it is an excellent thing.

In the matter of bonds for those who are landing, I went over that very carefully. There ought to be some definite security given to the Government of the United States or to the people of this country that such people entering our ports would not become a burden.

Now, as your time is limited, I will be brief. There was only one other matter I wanted to refer to. You will notice from what I read that Mr. Watchorn spoke of the desirability of our having all the good immigrants we can get. He spoke of the great demand for immigrants, just as the statement came from my friend from South Carolina [Mr. Ellerbe] and as it comes from all over the country. I think it is well for you gentlemen to thrash this matter out thoroughly, and I have confidence in your wisdom and patriotism to bring in a bill to keep out the bad and admit the good.

I think our friend from Pennsylvania [Mr. Adams] is, perhaps, going too far in the direction of restriction. But I think we need good immigrants. The great means of assimilation are the public schools of the country. We are assimilating the alien children, though we can not reach the aliens themselves.

Mr. WOOD. In a word, Mr. Goulden, what are the provisions of your bill?

Mr. GOULDEN. It makes mandatory the keeping out of the weak-minded and feeble-minded and imbeciles, and after the word "disease," in the act of 1903, it adds, "and those certified to be suffering from or found to be of poor physique," making their exclusion mandatory, so that there is no appeal whatever from the decision.

Mr. BONYNGE. That is in pretty nearly all the bills.

Mr. ADAMS. Is not the duty of this country just as great toward the uneducated as toward the educated?

Mr. GOULDEN. Greater, I think.

Mr. HAYES. The thing which the Commissioner-General of Immigration objected to was not what you stated. The thing he objected to, after my interview with him, was the deporting of unnaturalized aliens who should become a public charge. He says they might become a public charge from causes arising in this country.

Mr. BENNET. I would like to ask unanimous consent to have that interview with Mr. Watchorn incorporated in the hearings.

Mr. BONYNGE. Yes; I think that would be valuable to insert.

The CHAIRMAN. If there is no objection, it will be so ordered.

(After some informal discussion concerning the next meeting, adjournment was had at 12 o'clock noon until Saturday, March 3, 1906, at 10.30 o'clock a. m.)

COMMITTEE ON IMMIGRATION AND NATURALIZATION,
HOUSE OF REPRESENTATIVES,
Saturday morning, March 3, 1906.

Committee called to order at 10.50 a. m.

STATEMENT OF MR. NATHAN BIJUR, OF NEW YORK CITY.

Mr. BENNET. Mr. Chairman, I desire to say to the committee that I find there is some misapprehension as to Mr. Bijur's previous attendance before committees and his desire to be heard at this time, and I have been led by some remarks of Mr. Gardner to believe that Mr. Bijur had heretofore appeared before immigration committees, I find, however, that he was not, and that his appearance at this time is not at his own request, but at the request of Mr. Allen, president of the Society for the Improvement of the Condition of the Poor in New York City, who, without Mr. Bijur's knowledge, telegraphed Mr. Parsons, saying that Mr. Bijur would come here and speak on immigration before the committee. The first intimation that Mr. Bijur had that he was to appear was a telegram that I sent him after the date had been fixed.

I think this statement ought to be made in justice to Mr. Bijur, who has, in a way, been put in a position of being an active partisan on this question; and in a way in justice to myself, as to some extent, I unwittingly mislead the committee as to Mr. Bijur's desire to be heard.

The CHAIRMAN (Mr. Howell). Gentlemen, I will say that Mr. Bijur has come here to talk to the committee for a few moments. We have no special bill that we are considering—merely talking about the measure.

Mr. HAYES. The general subject.

The CHAIRMAN. Yes. If you have any ideas, Mr. Bijur, that you would like to advance to the committee, you may do so; and perhaps you are familiar with some of the different bills that have been presented here. We have all kinds of bills—some increasing the head tax, reducing immigration in different ways, and so on; and we will be glad to hear any suggestions that you have to make.

Mr. BIJUR. I had rather expected that that would be the course,

and that there might be questions asked that would suggest themselves.

I have had familiarity with the casual immigrant for a great many years through various philanthropic institutions with which I have been connected, and I think I have had an opportunity to study the immigrants at first hand. I have had a chance to weigh the results of immigration to the country with absolute impartiality. I have been a practicing lawyer. I have no interest particularly on the question; it makes no difference to me individually whether we have a million immigrants a year or none. And I think I can say reasonably that I have no preconceived notions on the subject. I hope that any member of the committee will feel free to ask me any questions that may suggest themselves, and in that case I possibly would do better than if I tried to make a constructive address on so broad a subject.

Mr. BURNETT. I would be very glad to hear you on the general proposition as to whether there should not be some plan devised to restrict all immigration further than it is now restricted. I will say to you that my idea is that there should be, but I would like to hear you discuss your views in regard to that.

Mr. BIJUR. Perhaps the best way of addressing myself to the subject, if you want me to say anything quite as general as that, would be to remark that I have not yet heard any argument based on facts or reliable statistics to indicate that there should be a change in present conditions.

Mr. FRENCH. That is, you think that we need this immigration; or, as between the two ideas, everybody agrees that we don't want bad immigration, and of course we will come to the question a little later as to how we may reach that. A great many people differ, however, upon the broader question of whether we want any immigration or much immigration. For instance, a number of the members of the committee would advocate measures, if they could be passed, which would cut out half of the immigration. And I would like to ask you if that is desirable?

Mr. BIJUR. The trouble is that the arguments against immigration overlap each other. Some people want to keep out all immigration, other people want to keep out unskilled workmen, somebody else wants to keep out skilled workmen; and then there are racial distinctions and distinctions on numbers—some people want a certain number—and it is to those various propositions that I am speaking when I say that I have never heard a continuous logical argument, based upon facts, why any one of those particular measures should be sustained, and while I don't know whether you want anything like this to go on the record or not. I will say that I have heard a great many speakers deliver addresses on immigration, and I have always felt that it was wasted time to answer them, because they were mere generalizations delivered before miscellaneous audiences, and it would not pay for the energy expended to take them up and answer them. Here, of course, there is real satisfaction in talking on the facts, and I welcome the opportunity.

Mr. FRENCH. Now, as to the restrictions to good immigration—

Mr. HAYES. He says he does not want any change in the present condition.

Mr. FRENCH. If our present laws are to be modified, they should be

simply modified to restrict what might be termed "bad" immigration—

Mr. HAYES. But he don't want any restrictions.

Mr. BIJUR. One can always reduce an argument to an absurdity.

Mr. HAYES. Let me see if I get your idea, because we do not want any misunderstanding. As I understand you, you see no reason, and never have have heard any argument that satisfied you that there should be any change in present conditions.

Mr. BIJUR. Yes, sir. Of course, you must not apply that to any change such as would keep out imbeciles and such as that.

Mr. HAYES. Of course, that is no change.

Mr. FRENCH. I was thinking this, that if you wanted to address yourself to that feature, what might be called a minimum amount by legislation on restriction—of course, the keeping out of imbeciles and such is not restriction.

Mr. HAYES. No; probably that would not keep out 500.

Mr. BIJUR. In other words, so far as I have been able to observe, our country and its inhabitants have progressed under present conditions; and it seems to me that if any change is to be made it is for the opponents of the change to say why and what it shall be. The general arguments that I have heard are all set forth in big words, such as: "We have had hordes of indesirables, and legions of paupers," and things of that kind. That does not mean anything at all. Take, for example, the phrase "Hordes of immigrants." The proportion of immigration to the population of the country is less to-day than it was in 1830 and 1840, or, in fact, in any period of our country's history.

Mr. BONYNGE. Are you quite sure of that?

Mr. BIJUR. I can give you the figures.

Mr. BONYNGE. I tried to figure that out last summer, and I did not arrive at that conclusion.

Mr. BURNETT. Last year it was one-fiftieth of the population, was that it?

Mr. BIJUR. Yes, sir.

Mr. BURNETT. Estimating our population at 80,000,000, it was one-fiftieth or more last year.

Mr. BONYNGE. As I understand your proposition, however, it is that the proportion of immigration to the total population to-day is less than the immigration to the total population in any other census decade.

Mr. BIJUR. Yes.

Mr. HAYES. Conditions are not the same. I do not think that that is so. I figured that out myself once. Of course there might be a year—

Mr. BIJUR. No; a decade.

Mr. HAYES. Oh, not a decade. I think you are certainly mistaken about that.

Mr. BIJUR. If you will take the census figures on "Population and immigration" you will find that the number of immigrants per 1,000 of the existing population in the country runs as follows: 1821 to 1830 it was 15 per 1,000; from 1831 to 1840 it was 47 per 1,000; 1841 to 1850, 100 per 1,000; 1851 to 1860, 110 per 1,000; 1861 to 1870, 73 per 1,000; 1871 to 1880, the same, 73 per 1,000; 1881 to 1890, 104 per 1,000, and from 1891 to 1900, 59 per 1,000.

Mr. HAYES. I did not figure it that way, and I think that is not exactly a fair way to figure it.

Mr. BIJUR. I am giving you a fact.

Mr. HAYES. It may be, but you see for five years of the last decade there were very few came in on account of the unusual financial condition of the industries of this country.

Mr. BIJUR. From 1841 to 1860 it ran about 100 per 1,000.

Mr. HAYES. Suppose you take from 1900 to the present time and compare it. I think you will get a different result from what you would in taking from 1891 to 1900; very different. And if the present rate continues—

Mr. BIJUR. Suppose you take a million to eighty million.

Mr. BONYNGE. Naturally from 1861 to 1870, on account of the civil war, it fell down to 73, and from 1871 to 1880, on account of the hard times following the panic of 1873, it would naturally be reduced.

Mr. BIJUR. From 1880 to 1890 were good times.

Mr. HAYES. From 1891 to 1900 there was no panic, although we had five years of industrial depression.

Mr. BONYNGE. It went lower at that time than it did in the period following the panic of 1873.

Mr. HAYES. Yes; I think it did, because the industrial depression was a great deal more acute.

Mr. BURNETT. Taking those years prior to 1880. Can you give us an estimate of the character of immigration at that time? And I would like to ask if the majority of it was not from northern Europe, and since that time has not the large majority come from southern Europe?

Mr. BIJUR. Within recent years, certainly.

Mr. BURNETT. Now, do you think the class that we are getting from southern Europe is, as a rule, desirable immigration, and especially the 276,000 from Italy?

Mr. BIJUR. You are asking a question that is pretty hard for a man to answer. I don't know by what standards I shall judge men, excepting good citizenship. If you mean that the people who are now coming in seem strange to us, and come from a country that does not permit of as good conditions as those under which we live, I would say that the same is true of all people who came to us in the forties and the fifties. It has been pointed out by Governor Cleghorn, who has written a very able article, that the criticisms made of the Italians and the "slowbacks," as they are called, and the Russians who come to-day were made exactly of the Irish and the Germans who came in the forties, and, in fact, the descriptions of the conditions in Ireland at the time the famine drove so many to this country show that they were infinitely worse than the conditions that obtain in any part of the European continent to-day.

Mr. HAYES. Mr. Burnett was not speaking of conditions.

Mr. BIJUR. I say, by what standard will you judge the people—that is the question.

Mr. BURNETT. Were not those people capable of more thorough assimilation with our citizenship than the people from the southern European countries, and has not subsequent events based upon that assimilation proven that?

Mr. BIJUR. That is one of the arguments that I find so hard to answer, because you do not give me the facts. Mind you, I am not

saying that I oppose you there, but what are the facts that prove to you that the Italian and the Austrian and the Russian are not going to make as good citizens as the Irishman and the German? I remember in my boyhood days that we used to talk against the Irishman and the German very much as we talk against the Russian and Italian to-day, and yet to-day we hear that those people are desirable classes, and that they have made our best citizens. What is there against the citizenship of the present immigrant that enables me to judge of their desirability? I have not heard any facts. I am not talking of prejudices. Of course we are all subject to those, I as well as anyone else. When I see anyone who is strange to me, of course I am not as much drawn to them as I am to those with whom I am acquainted and to whom I am accustomed.

The CHAIRMAN. We have had shown to us that a much less percentage of people come from these countries can either read or write than the other people.

Mr. BURNETT. And a larger percentage of criminals, paupers, and insane?

Mr. BIJUR. Now, we have three facts; that they can not read and write; that they are a more dependent class—

Mr. HAYES. In the city of New York alone in their public institutions to-day are over 12,000 aliens of all nationalities.

Mr. BIJUR. Gentlemen, I suppose you will permit me to speak with perfect frankness, because I am trying to get at the truth. I try to keep my mind as open as may be on this subject and to get at the truth regardless of color. What do you mean by aliens when you say there are over 12,000 aliens in the New York dependent institutions?

Mr. HAYES. People born abroad, of course.

Mr. BIJUR. Not only that, our naturalized citizens are born abroad. Now, if you will let me have a copy of the Commissioner-General of Immigration's report for last year, the year ending June 30, 1905, I would like to point out, if I may, to you gentlemen how men will draw totally unwarranted inferences. Here is, on page 60 of the Commissioner's report, a statement that our population—and I will give the figures in round numbers—65,000,000 of native born, and foreign born, 9,300,000; aliens, 1,000,000.

Mr. BONYNGE. Do you mean by aliens those born abroad and unnaturalized?

Mr. BIJUR. Pardon me. I know what I mean by aliens; but the man who wrote this report did not know what he meant by aliens. Now, below those figures, he says that the number of inmates of public insane and charitable institutions out of these respective bodies of population are as follows: Native born, 165,000; naturalized, 51,000; aliens, 30,000—in round numbers.

Mr. HAYES. He means by that unnaturalized aliens, of course.

Mr. BIJUR. I don't like to take this didactic tone, and you will pardon me; but the study of statistics is not a science. It will not do for a man to take large numbers from various sources, put them together, add and subtract, and then say: "See what the difference is; millions, and it is awful." Figures have got to be studied with intelligence, and you must observe the mean in order to make proper deductions from the result obtained.

Now, we figure 1,000,000 aliens with which the 30,000 of dependent aliens is compared. And to compare the 30,000 alien inmates very

often does not define the meaning of the word alien. Alien inmates in institutions of that number gives us a perfectly meaningless record. When he figures alien population he figures men, women, and children. What he means by naturalized population I don't know. Does he mean that women and children have been naturalized? The census figures show that there are approximately 10,000,000 of foreign-born people in the United States, of whom 5,000,000, approximately, are males of voting age.

Mr. BONYNGE. Half?

Mr. BIJUR. Yes; of foreign born. I confess it is hard for me to understand——

Mr. HAYES. Where do you get these figures?

Mr. BIJUR. They are in the Census report.

Mr. HAYES. Do you mean to say that we have 5,000,000 voters foreign born in this country?

Mr. BIJUR. Naturalized; oh, yes; indeed we have.

Mr. HAYES. Males, over 21 years of age?

Mr. BONYNGE. What was the total vote for President of the United States last year?

Mr. BURNETT. About 9,000,000, was it not?

Mr. BONYNGE. Oh, no; 14,000,000.

Mr. BIJUR. 15,000,000, I think.

Mr. BONYNGE. Then one voter out of three foreign born.

Mr. BIJUR. Why, certainly.

Mr. BURNETT. What is the proportion of foreign-born to native-born citizens?

Mr. BIJUR. There is a difference there, and instead of being one-third it would be about 25 per cent.

Mr. HAYES. It strikes me as a remarkable proposition that two-thirds of the aliens that come to this country are males, and I don't think your figures will bear that statement out.

Mr. BIJUR. I don't draw any other inference here. I confess that I have not attempted to come to a final conclusion. Let us take one fact. The report here compares certain proportions of the inmates of dependent institutions with classes of population. Now, the question is, Did the man who made that comparison know what he was talking about? It is perfectly evident that he did not, and that he did not know what his figures meant, nor what his terms meant. Secondly, his comparison is perfectly meaningless for any purpose whatsoever. I don't know what the true facts may give rise to in the way of comparison, but this tabulation is meaningless.

On page 209 of Part 1, Population of the Census, I will read an extract: "The alien summary shows the number of and percentage of foreign-born males of voting age at the last two censuses who have been naturalized, who have taken out the first naturalization papers, or who are aliens." Then we have an aggregate in 1900 of 5,100,000; naturalized, 2,862,000, and first naturalization papers taken, 416,000.

Mr. HAYES. Besides those naturalized?

Mr. BIJUR. Virtually for our purposes about 3,500,000 naturalized.

Mr. BONYNGE. But the number given as naturalized is included among the aliens.

Mr. BIJUR. Not at all; oh, no. Now, in coming to aliens, 1,070,000; and then unknown, 752,000. I think it is fair, because a large proportion of the unknown are aliens——

Mr. FRENCH. Under "Naturalization," would not that include children and wives?

Mr. BIJUR. It says "foreign-born males of voting age." Now, you see what they have done with these figures. They have compared the number of native inmates of institutions with the total native population, including men, women, and children.

Mr. HAYES. Do the figures show, Mr. Bijur, that we have in this country of foreign-born population nearly twice that number, nearly 10,000,000?

Mr. BIJUR. That is what the census says; now, children of foreign-born parents—

Mr. HAYES. No; but of foreign born, born on foreign soil. The point I am getting at is this: Including all the women and the children in this country not of voting age there are nearly 10,000,000 aliens, or people born abroad; and of that 10,000,000, 5,000,000 are of voting age and male. That is an extraordinary statement to make.

Mr. BIJUR. Because the men come over and bring their families. It is in the census.

Mr. HAYES. It is alarming if that is so, very alarming to me if it is true.

Mr. BIJUR. Now, analyzing some of the causes, the aliens in institutions of New York State are published by the State board of charities of New York State. Now, these 30,000 alien inmates that are compared with the 1,000,000 aliens, which means aliens of voting age, males—these 30,000, so far as they relate to New York State, when the figures were analyzed showed up a result which I made a memorandum of—

Mr. BONYNGE. May I interrupt you there. I don't think I understood you, and perhaps the committee didn't. You referred to a summary on page 209, which gives the number and percentage of foreign-born males of voting age at the last two censuses—that is, 1890 and 1900—who have been naturalized, who have taken out naturalization papers, or who are aliens. The total number is 5,102,534. Now, of that number 2,862,546 have been naturalized. That 2,862,000 is not in addition to the 5,000,000.

Mr. BIJUR. Oh, no.

Mr. BONYNGE. Part of it—1,070,000—is also a part of the 5,000,000—each one of these classes—so that we had in 1900 naturalized—foreigners who had become naturalized—approximately 3,000,000. Therefore we were not correct in saying that we had 5,000,000.

Mr. HAYES. We had 5,000,000 of voting age.

Mr. BONYNGE. No.

Mr. HAYES. Oh, yes.

Mr. BIJUR. Yes; that is right.

Mr. ELLERBE. Did that include those who had been naturalized?

Mr. HAYES. Certainly.

Mr. BIJUR. Five millions include all; in other words, there are 5,000,000 foreign-born males in the United States that are or can be made citizens.

Mr. BURNETT. Over 21 years of age?

Mr. BIJUR. Yes, sir.

Mr. HAYES. That in all probability within five years will be voters. They are probably voters now.

Mr. BONYNGE. Within that time, of course, there will be some mil-

lions of native born who will arrive at voting age—Americans—who will offset to a large extent those who may become naturalized.

Mr. HAYES. Not in five years, in that proportion.

Mr. BONYNGE. I forget just how many young men, it is estimated, cast their first ballot at each Presidential election, but it is an astounding figure.

Mr. HAYES. But not 2,000,000.

Mr. BIJUR. One of the arguments usually made to the committee in favor of immigration is that it is the grown men who come here and we save the cost of his bringing up; that is, we avail ourselves of the benefits of the man having been brought up in another country.

Mr. HAYES. That is the commercial end of it.

Mr. BIJUR. So that there is a view that there comes to us a larger proportion of grown men in immigration than we would find in the natural increase of the country.

I was about to say that in that 30,000 of alien population in the almshouses, so far as it relates to New York, the New York State board of charities has analyzed the figures and found—I can only give you now the rough figures—that a very large part of this number, say those in almshouses, had been here over twenty years, and some for thirty to forty years, and more than half of them were women. Now, I don't know what conclusions you are going to draw or that I can draw from comparing that number of foreign-born men and women who are in dependent institutions of the United States, and who have not become naturalized, with the number of foreign-born males, 21 years of age, who have not become naturalized. I think it is perfectly meaningless; and yet we have this great deduction drawn from this.

Mr. BURNETT. I suppose it does not make them any less undesirable because there are women in the penal institutions.

Mr. BIJUR. No, sir; but the trouble is that when you have these figures before you you draw the inference that is drawn in this report, namely, that aliens are people that it is intended you shall think of who have been here only five years, all kinds of people, and are dependent in the proportion of 30 to 1,000, whereas citizens are only dependent in the proportion of 3 to 1,000. That is entirely unjustifiable. By a rough figuring you conclude that there ought to be 3,000,000 aliens, men, women, and children, in the United States at that time. Secondly, comparing your 30,000 inmates with the 3,000,000 aliens, you would have, instead of 30 to 1,000, 10 to 1,000, and the relation of aliens to citizens in point of dependence would be—aliens, 10 to 1,000, and citizens, 3 to 1,000. I don't know how much more these figures will approach each other on scientific analysis and comparison, but the figure given here is wrong by three times against the aliens. I don't say that the figures were gotten up for the purpose of demonstrating that theory—

Mr. BURNETT. I suppose it is true that of the inmates who are native born the majority are women.

Mr. BIJUR. I don't say that the majority are women, the majority in certain institutions in New York City. The majority need not necessarily be women; they may be male children, but I don't know. Until I have a fact I don't try to draw a conclusion. Now, assuming—and I think one may make some common-sense assumptions, we need not necessarily be backed up by figures—but assuming that the immigrant is an occupant of a dependent institution in a greater

ratio than the native born and the citizen. That is perfectly natural. The immigrant comes here to better his condition. He does not come here to make it worse. We all know that the country has been built up by people who came here to improve their condition; and those who have been here for a long time, we are thankful to say, have improved their condition. In other words, we are rich and they are poor, and the application of the theories on dependence and the proportion of dependence among immigrants has no relation to immigration but to poverty.

That has been pointed out before by the social writers of the day—men like Professor Cummings, of Wisconsin, and, I think, by Doctor McLachlan, of the Surgeon-General's Office, attached to the Immigration Service, and by a number of men who have given direct study to this subject. It is the problem of poverty that you are talking about when you apply this to the immigrants being dependent in larger numbers than the native born, and simply because the native born have grown richer. Of course the man who works in the machine shop is the man to whom accidents will happen. You will find more accidents to men working in machine shops than to the proprietor. For instance, you estimate the number of accidents, or the proportion of accidents, among firemen and among lawyers, and you will find that the proportion is far greater among the firemen than among the lawyers. There are no theories to be drawn from that, excepting that the work that the fireman engages in is more dangerous than that of the lawyer.

Mr. HAYES. Well, sometimes not.

Mr. BIJUR. You see in that one figure and a great big inference. That is supposed to show that the immigrant, or the alien, meaning the recent immigrant—the one who has come in within the last five years—is more dependent than the rest of the population by an enormous ratio, and I say it is absolutely unwarranted. It is arrived at by doing direct violence to the language of the census.

Now you must understand that they must go further. I don't wish to deliver a lecture on statistics, but think for a moment. The wife and children of this alien—this alien of voting age—may be native born, as when you take the dependents you must group them with him, because he is responsible for their support. Now, he has gone into an institution, say, by reason of an accident—hurt himself in a shop. Thereupon you have 1 alien—1 dependent, and his wife and 5 children, who may be all self-supporting—are added to the number of native born who are not in institutions. Secondly, they decrease by their addition the ratio of dependents among the native born, while it increases the ratio of aliens in this country. What ought to be is this: This man, 5 children and wife, should be added together, making 7, because those people are dependent upon 1 alien, and then you would have 1 alien out of 7 in the institution.

Mr. HAYES. The inference that would naturally be drawn from a statement of that kind—and I see the force of it—would be to make the proposition in favor of the alien.

Mr. BIJUR. I don't know; I haven't the slightest idea. I don't think it would.

Mr. HAYES. You started out by saying that the alien worked in the factory—or that was the implication—and of course he was subjected more to accidents than the natives, and it would not be surpris-

ing if he were found oftener in dependent institutions. His children are born in this country and therefore would be dependents, but they do not count on the alien list; they count on the native list.

Mr. BIJUR. You don't know whether his children would be dependent or not. I know dozens of families with children running from 14 to 16 who are independent.

Mr. BURNETT. As I understood Mr. Bijur, he said that there would be 7, and all dependent.

Mr. BIJUR. That ought to be estimated as dependent, because they rely upon this man.

Mr. HAYES. So that the inference would be that therefore the relation of the dependent alien is even greater than the figures show in proportion to the native born, because a great many that are dependent upon the alien are native born.

Mr. BIJUR. It may not be. The point I make is this, not that I am trying to prove anything, but to show you that these figures are not a reliable basis for an inference, because they are incorrect in toto. Now, if you have any other figures, let us try a fair inference from them. I don't know what the conditions of these aliens and their families are, or how many are dependent. The Government has tried to find out certain things. One man takes those figures, takes the 1,000,000 aliens, meaning thereby males of voting age, foreign born now in the United States, and concludes that term to mean the total population of the United States. But I don't know what they are driving at.

Mr. BONYNGE. In the Commissioner's report he compares the number of aliens in dependent institutions with the number of aliens in this country. He don't say anything else, he simply says aliens.

Mr. HAYES. He compares the population of alien dependents to the total alien population, and the proportion of native dependents to the native population.

Mr. BONYNGE. He does not compare with the total population. What does he actually compare it with, according to your understanding? With foreign born males?

Mr. BIJUR. Of voting age.

Mr. BONYNGE. Who are naturalized?

Mr. BIJUR. Yes, sir; and he helped out with 700,000 unknown.

Mr. BONYNGE. Does he compare those in dependent institutions with the exact number that is given in the census as those of foreign born unnaturalized?

Mr. BIJUR. Of voting age. Practically, I think it is even a little less. Of course, the total alien population would be larger than the number of males.

Mr. BENNET. Five times as much?

Mr. BIJUR. I don't know.

Mr. HAYES. The figures show nearly two.

Mr. BURNETT. The larger majority are 21 years of age.

Mr. HAYES. It says, according to the statement, that there are 10,000,000 foreign born population in the United States, and that 5,000,000 are of voting age and males.

Mr. BIJUR. We have, perhaps, delayed too much on it. I did not intend to make this a very important point, but to indicate that here we have a figure from which the most generally quoted inference has been drawn—that the aliens are ten times more dependent than the

native born. I think everyone of you would concede that that ought to be cut into 3—that it is 3 to 1 instead of 10 to 1.

Mr. HAYES. It ought to be 15 to 1, because it should be divided by 2 instead of 3.

Mr. BIJUR. Yes; of course you want to add the unknown.

Mr. HAYES. That is comparatively small.

Mr. BIJUR. You must revise the naturalized people. When you once get one factor in a comparison changed you must change them all. What you add to one you have to take from another. I want to show you that it is not half as bad—of course that brings, you know, the naturalized and the aliens on a par.

Mr. HAYES. No; it brings only fifteen in a thousand, and it means that the others are ten times as liable to be public charges as the natives—no, five times.

Mr. BIJUR. It makes a distinction between the alien and the naturalized.

Mr. HAYES. The word "alien" means a man that is born abroad.

Mr. BIJUR. Yes; but I don't know what significance—

Mr. BURNETT. That was in 1900. Since that time, in 1906, has the proportion been kept up of those of voting age who are males?

Mr. BIJUR. I don't know anything about that, and I have never come across anybody who did know.

Mr. BENNET. Are there any statistics anywhere available?

Mr. BIJUR. The United States Government hasn't got them. You take the Government statistics right along and deal with them impartially and you will find, I think, the general statement is true that there are no inferences that can be drawn either for or against immigration.

I would like to give a figure that would stand the test of the census. I just happen to have the figures of the New York State almshouses, which are included in the 30,000 alien dependents in the Commissioner-General's report. Our State board of charity analyzed those figures, and out of 937 alien dependents who were in the New York State almshouses, according to the Commissioner-General's report for 1904-5, 544 were women. That shows you that the 1,000,000 aliens included inmates who were women and not the males of voting age. More than half were women; and only 75 out of 1,000 had been here less than five years, and 513 had been here over twenty-one years. So what becomes of this elaborate table on page 61 of the Commissioner-General's report?

Mr. FRENCH. What per cent of foreigners become inmates of dependent institutions within five years?

Mr. BIJUR. Just the same proportion as all other human beings who are poor. That is my common-sense answer, but I have no facts to prove it.

Mr. FRENCH. The figures that you gave tend to minimize that. I want to ask you this question, whether or not it would not often tend to eliminate the number of dependents placed in the institutions, if it were required that each foreigner should have a little more money—or more money—upon his arrival here?

Mr. BONYNGE. I don't see how it would help things. What you would require an immigrant to have would be disposed of in a very short time. The figures show that a very large percentage of those in the dependent institutions have been here for more than five years,

and the amount that the immigrant would bring would not last him five years.

Mr. HAYES. Where did you get those figures you referred to a moment ago?

Mr. BIJUR. From the report of the State board of charities.

Mr. FRENCH. A very small amount of money at a particular time in his life might be a very important thing in getting him to a place where he could get work.

Mr. BIJUR. I do not mean what I have to say in a rhetorical sense, but I want to ask you as men how you are going to put yourself in the position of judging whether a man is going to get along by the fact that he has a certain number of dollars in his pocket when he lands here? I think that in order to insure ourselves against dependence, immediate dependence, it is well that the immigrant should have something in his pocket, or should have some friend to whom he could apply, or some relative who could help him; but I think it is very dangerous—

Mr. BURNETT. It would give him an opportunity and the means of getting away from the port of entry.

Mr. BIJUR. What is the matter with the port of entry?

Mr. ELLERBE. Sustenance, so he could have time to look around and decide where he wanted to go.

Mr. BIJUR. I know many immigrants who are earning \$2 to \$3 a day two days after they land, and others who land with \$300 or \$400 and who lose it right away. There is no meaning in those things, you can not get anything out of that; they are all generalizations.

Mr. BENNET. Franklin landed in Philadelphia with nothing but a loaf of bread under his arm.

Mr. BIJUR. Count Pulaski, a member of our race, landed here absolutely penniless, and if it had not been for his support during the Revolution we would not be the United States of America to-day. Did we want to keep him out?

Mr. GARDNER. As a matter of fact, the immigrant who lands in New York City goes to work the next day or the day after, doesn't he?

Mr. BIJUR. I wish it were true.

Mr. GARDNER. Your United Hebrew Society has daily contact with thousands of those cases, hasn't it?

Mr. BIJUR. We would not hear of the man who gets work right away; we would hear of the man who does not.

Mr. GARDNER. You know that it is a comparatively small proportion of the men who land that are not landing with a definite purpose to go to work somewhere; not with a general idea of looking around for work, but there is somebody who tells them exactly the boarding house to go to, or meets them on the wharf, or even comes over with them on the steamer. I am not speaking of the Hebrews coming from Russia, who are driven out by the unusual circumstances there, but the immigrant coming here; we will say two years ago when we had 860,000 that came into the port of New York. They went right to work, didn't they?

Mr. BIJUR. I must say truthfully that I don't know. I assume that that may be true. I hear it said; but I don't know whether you refer to anything in particular—for instance, the Italian padrone system. If that is in your mind, I don't know anything about it personally. If it be true, it ought to be capable of demonstration.

I say this, without any view of leading to any inference, because I don't know; but do you mean contract labor?

Mr. GARDNER. I put it up to Mr. Campbell the other day, of the Immigration Bureau. A man arrives in this country who comes out as a pioneer on his own initiative. He comes over, and the moment he gets outside in the street, if that man is not already directed somewhere, he will begin to look around; he will ask somebody what is that structure, meaning the elevated railroad; he will look to the right and to the left, will make inquiries, the street will be congested with a thousand people who have just landed, and under those circumstances, as a matter of fact, what happens?

Mr. BIJUR. He has a letter that he has received on the other side telling him to come over here, that there is lots of money to be made. That is what makes immigration. If the friends and relatives of these people who come over got letters saying that this is a bad country, we have no prosperity, they would not come. Now they get a letter from a man living somewhere, either Kansas City, San Francisco, New York, or anywhere else, saying, "I came over here two years ago, and I am now making \$40 a week."

Mr. GARDNER. I am not speaking of the man who goes out on the railroad; I am speaking of a man whose final destination, expressed in the manifest, is New York City. I have always maintained that if those men did not come over here under contract, expressed or implied, or in some way—that the moment he got on shore he finds the street congested with people, he looks all around, wondering what the deuce he is going to do.

I know I should if I landed suddenly in Russia along with 1,000 men like myself; I would be looking all around, the street would be congested with people, and we would be going everywhere to get information. Soon the street empties itself just as quickly as if it was a body of excursionists coming from Coney Island—

Mr. BONYNGE. If you left Massachusetts to go away absolutely to locate you would take letters of introduction to some people at your destination. You would not get off of the train and stand on the corner looking around and wondering where you are going. When I left New York and went to Denver I knew exactly where I was going, and I had something in view.

Mr. GARDNER. Perhaps you had a contract, expressed or implied. Supposing I landed in Russia with a letter addressed to 12 Nevsky Prospect, to which I was going. I should be inquiring of the people who came with me to find where that was.

Mr. BIJUR. You are generally delayed at Ellis Island until you show that you are going over and have some one to take care of you there.

Mr. GARDNER. Yes. If it is a child, they require them to wait; but I am talking now about able-bodied men. The able-bodied man is always met by someone. You and I don't see it, but very frequently it is somebody who came over with him. But he has someone who waits for him. That must be so, otherwise we would see the stagnation in New York City. Suppose they have a definite address; I am hustling around with everybody else who has come over, unless we are directly in charge of some particular—

Mr. BIJUR. Well, this is a hypothesis as to something that one can see, but which one does not see.

Mr. GARDNER. Well, I am getting back to Mr. French's question as to that money being in their pockets. His question of whether that money in their pockets is in the line of a guaranty which enables them to stay around looking for work for a month or two until they get their bearings. My theory of immigration is that immigration that comes here does not come with an indefinite idea of going to work and is pledged to take the first job that presents itself, but my theory is that the job has already presented itself before he left old Europe.

Mr. BIJUR. How will you prevent that, by having money in his pocket?

Mr. GARDNER. As to whether he does come out here looking for a job and is pledged to take his first job—if that was so I would say that he would be better off with money in his pocket, because he would not have to take his first job, and he could go down to Long Island and get something to do. My theory is, and I am somewhat convinced of it, that, practically speaking, the pioneer who comes over here on his own account does not exist.

Mr. BONYNGE. I think, Mr. Gardner, that you make the wrong assumption that the pioneer would come here without having any friends; that he would naturally land without having the least idea of what he was going to do. No pioneer goes to any country under those conditions. He has some letters of introduction to people, or he knows some people here who have led him to come to this country.

Mr. BIJUR. May I interpose a thought? It will enable me to answer Mr. Gardner with greater freedom. I don't want to feel that because I am a Jew I hold a brief for the Russian-Jewish immigrant.

Mr. GARDNER. I understand that.

Mr. BIJUR. Let me explain. I regard this question of immigration so far as immigration is to be discussed, as an economic, a political and a social question. From the political standpoint I take the liberty of believing that the United States of America has a certain purpose, and perhaps its greatest purpose—that is, the spread of religious and political freedom, and that that purpose which is the historic purpose of our Genesis will continue to remain such. Secondly, that regardless of the economic reasons, whatever they may be, that wherever there exists in the world a religious or political persecution, whether it be the Armenian Christians of Turkey or the Russian Jews in Russia, the ports of the United States should be kept open to these people.

Mr. BURNETT. Even if it menaces our institutions?

Mr. BIJUR. Your institutions; that is begging the question.

Mr. BURNETT. Would not the law of self-preservation come in there.

Mr. BIJUR. If they come with violence to club us to death; but if they become good citizens the only object is that they affect our economic condition and cost us money. That, I say, is my view. My view is that of a lawyer, regardless of the sentiment or religion involved. The ports of the United States must remain open to the persecuted, whether it be because of religious or political persecution, and regardless of what the politics or religion might be. That being my view, I eliminate to that extent those elements that are affected by that fact from this discussion. So far as my attitude is concerned, I am absolutely cold-blooded and impartial about that. Therefore, when you ask me a question I do not in my own mind try to find out

whether it will apply to this or that. You ask whether I think the male immigrant that comes over here—I suppose you refer to the male—

Mr. GARDNER. I mean adult males.

Mr. BIJUR (continuing). Are provided with places before they come here. I tell you, in the first place, I have no knowledge, and, in the next place, such common sense as I have and little experience in that direction would lead me to say that some have and most have not.

Mr. GARDNER. Most have not a place provided.

Mr. BENNET. Here is what Mr. Gardner means, that they are not going to work for John Smith, say, at \$1.67 a day to dig a cellar; but this, that they know from friends in this country, speaking specifically of New York, that the Pennsylvania Railroad is being constructed through Thirty-fourth street with a particular kind of labor; that there are prospects that after that is completed, which will not be for some years, that the city will be building subways, which will require that kind of labor; that the kind of labor that this man possesses is in demand, and that friends of theirs, commercial or blood kin, are employed in that kind of labor, and that when they leave their country they have, to that extent, a certain definite idea of what they are going to do here, and in a general way where they are going to do it. Isn't that your idea, Mr. Gardner?

Mr. GARDNER. My idea is that they come from Italy, say, and that they know before they leave, that they have had direct communication from their relatives, that it is to their advantage to come here, that they can be put to work, and that they know as nearly as anything can be ascertained that unless a very exceptional situation arises the Italian boss will put them to work a few days after they have landed, at work supplied to them by the agent.

Mr. BIJUR. I don't know, I can't say as to that, unless you have evidence. I should say that infinitely more come just on the general report that they can get along in this country, and that they know they can't get along at home, just for the same reason that our fathers came.

Mr. BENNET. And that most of them had friends here, and when they come to New York that they go to those portions of the city where their own countrymen are; and you will find house upon house containing people not only from one particular country, but from a particular village of a country.

Mr. BIJUR. I am willing to say that the ordinary immigrant who lands in New York knows more about New York than any of us know about the city from which he came.

Mr. GARDNER. To return to Mr. French's question about having this money in their pocket. If you will stand alongside the manifest clerk's desk you will see a fellow fish a little letter out of his pocket, pull out two or three pieces of gold of the country where he comes from—

Mr. BIJUR. I don't know how I can determine that.

Mr. GARDNER. In your opinion, from the rumors that you hear, is that handed to him by somebody to show the inspector?

Mr. BIJUR. I really do not know; I haven't the slightest idea.

Mr. GARDNER. You know, from private conversation that we have had together, that I put much more strength on economical grounds than any other; that I haven't prejudice, and that I have always based

my argument on the economic one, so that I certainly am not asking any questions with a view to collecting material against the immigrants from any particular country of Europe or any particular race. I am simply looking on this question, even if I had no secondary views, from the economic standpoint, though I suppose I have some secondary views which are not either racial or religious. Nevertheless, the questions that I am asking you are entirely aimed at the economic side of the controversy. The reason, as I understand it, that Mr. French asked that question is that this committee has before it a proposition for making a definite sum which an immigrant must show to an inspector. That is recommended by the Bureau of Immigration.

As the law is enforced to-day a definite sum is not required. Sometimes they will require a man to show \$50, and sometimes they will not require him to show anything, according to the judgment of the inspector. That is, if he sees a strong, able-bodied fellow come in carrying six or seven packages on his shoulder, with a sturdy wife carrying her share, and with healthy-looking children, he says that that is a pretty steady-looking outfit, and I suppose he could come in if he didn't have 50 cents in his pocket. But along comes a little fellow, leaning on a cane, and the doctor's report shows that he is suffering from some trouble that is more or less serious, and the chances are that fellow is going to become a public charge. A proposition has been presented to make a minimum amount—\$25 or \$50, whatever it may be—and that we shall exclude all who can not show it. My question is aimed at finding out whether if such a recommendation was made it would or would not result in the contractor for labor supplying that man with the money to get through the gate.

MR. BIJUR. I think it would. I think the danger of that is that you relax the vigilance of the inspector by making him think more about the money in the pocket than the man himself; that you will change your standard from what you have to-day, and as you have just explained, to neglecting the liability to become a public charge in order to get the money. Of course, if a man has \$30 in his pocket we all know that his chance of becoming dependent is diminished by that amount; that is so even if he loses that in a minute. I want to say what I have always thought of the danger of a large head tax: First, it would make an artificial standard instead of the present one. The result of that would naturally be that the worthy people who could not show the money would be kept out, and the unworthy who could show it might come in, and last, but not least, it is so easy of evasion.

MR. GARDNER. That is not the proposition for a head tax.

MR. BIJUR. I beg pardon, perhaps I ought not to have said head tax.

MR. HAYES. I understand you are prominently connected with some benevolent society.

MR. BIJUR. For a number of years; yes.

MR. HAYES. Some of us do not know about New York City, and I want to know if it is true that there is a great deal of poverty among the foreign population of New York City?

MR. BIJUR. Unquestionably.

MR. HAYES. A great deal of suffering?

MR. BIJUR. Unquestionably.

Mr. BONYNGE. Is the proportion larger among the foreign born than among the natives?

Mr. BIJUR. Roughly speaking, I think yes; considerably more.

Mr. HAYES. Is it also, then, not true that every alien that lands in New York City, even if he has means of support and stays there, adds to that poverty and to that suffering?

Mr. BIJUR. No.

Mr. BELL. If he has no means of support at all?

Mr. BIJUR. Not by any means; no, sir. Many of those who are without any means become very prosperous, and others land with means and become dependent. That is an individual question; you can not draw any general proposition as to that.

Mr. HAYES. As a general proposition, isn't that true?

Mr. BIJUR. Not by any means. There are thousands and thousands who land without any money who would not be dependent. In other words, I don't think you can draw a general inference as to that when you are dealing with God's creatures.

Mr. HAYES. Here we have in New York City four or five millions of population, and a very large proportion must of necessity be laborers. You dump in there 400,000 or 500,000 more laborers, where there is already existing poverty, lack of employment, suffering, and the like. I say that the inference must necessarily be that the bringing in and dumping down there of that other 400,000 or 500,000 aliens, who necessarily become paupers with those already there, will add to the suffering and lack of employment and poverty.

Mr. BIJUR. Now, let us get our terms right. Poverty and suffering and labor are three entirely different terms and unrelated to each other. A man may be a laborer all his life and not suffer from poverty.

Mr. HAYES. When I speak of suffering, I mean he has no proper place to be housed, no nutritious or wholesome food is supplied to him.

Mr. BIJUR. I don't think that that is so; nor have I seen it demonstrated.

Mr. HAYES. Then I am misled.

Mr. BIJUR. Yes; I think you have been.

Mr. BENNET. There was a gentleman by the name of Robert Hunter who made the statement in the papers that in New York every morning there went to school 50,000 children who could not learn because they did not have sufficient food.

Mr. HAYES. I read that statement.

Mr. BENNET. Here is the sequel to that: The Salvation Army, which is one of the most effective agencies at work among the poor, said that if that was so they would stop it. They opened stations through the poorer sections of the city for the relief of those supposed starving children. I have forgotten just how many they opened, but they announced that they stood ready to do all that was necessary, and they opened these stations in sections where Mr. Hunter had stated that the destitution was, and they announced it in all the papers. They only kept those stations open one week, because the children did not come.

Mr. HAYES. That don't prove anything at all, and it don't disprove Mr. Hunter's statement in the least, because it is an indication

of the innate self-respect that exists with every man that deserves the name of man. These children would go hungry before their parents, or even the children themselves would take charity of that kind. Let me tell you something of my own experience. I know of a case where men came to me, when I was connected with a corporation, begging for work. It was in time of depression, and work was scarce. Finally we got where we could give them work, and we put them to work; and two of those men absolutely fell down before noon and could not get up, from exhaustion. Some of them had not had anything to eat in two days, and yet carloads of provisions were being distributed twice a day within a quarter of a mile of where they were.

Mr. BENNET. Do you think that a family which has the self-respect that you mention, that is destitute, that will not let their children, for whom they must feel very great affection, accept the food of charity, stand a pretty good chance of being good citizens of the United States?

Mr. HAYES. I do. I believe that those people should not be crowded so that they could not provide for themselves, when we have them in our country. They come here to take advantage of our institutions and we owe as a duty to them protection against that sort of thing.

Mr. BIJUR. If everybody had said what you are now saying before they came, they would not come here; and so, going backward, we would not have come here.

Mr. HAYES. That is different, because when my father—my ancestors—came here our country was unsettled—a virgin country—just waiting for the hand of the laborer; it was not crowded so that tenements were occupied by thousands of people where they never see the light of day, as they do in New York.

Mr. BIJUR. There you are mistaken—entirely mistaken.

Mr. HAYES. I have seen some of them.

Mr. BIJUR. When my father came over here the tenement-house situation in New York was much worse than it is now. I know whereof I speak, because seventeen years after I was born I saw the light—

Mr. HAYES. That doesn't disprove what I was saying; there were not so many of them.

Mr. BIJUR. I think this is very apt to be one of the fallacies into which we all fall, of finding a condition and attributing it to a cause which we have then in mind. You are simply saying that there are a great many poor people in the United States. There is no doubt about that—from Maine to California. I don't think the proportion of poverty in New York City or suffering in New York City is any greater than it is in Kansas City, Mo.

Mr. HAYES. I never went to New York to stay a week in my life that I didn't come away with the heaviest heart in my body that a man can have. I have been there three or four weeks at a time, and never in my life have I seen human beings live under the conditions that exist there, and I think that if a man has any humanity in him that he will endeavor to stir it up.

Mr. BIJUR. Well, I have been in Alaska, and if you have ever been there you will have seen people living under conditions there that are terrible—in dirty little cabins, insufficient food—and I would just as leave be in a New York tenement.

Mr. BENNET. There was a man who has been all through the east side of New York, a salesman from another city, and he told me in my house the other night that the back alleys of Washington are worse than any slums in New York City.

Mr. HAYES. That don't prove anything either; it is no reason why we want to add to that condition.

Mr. BIJUR. Let me show you the difficulty in discussing this question. Professor Walker said that immigration caused a diminution of the native birth rate; consequently if you stopped immigration the native birth rate would grow. What reason have you to show that when you stop the immigration coming in there will be natives to put in their place?

Mr. HAYES. But that is all theory; we have to deal with present conditions. When you are going to administer a remedy to a sick patient you treat him as he is.

Mr. BIJUR. The present condition in New York City is such that I can not get my house repaired, because I can not get workmen, and my wife can not get servants.

Mr. HAYES. I have no trouble in getting servants.

Mr. BIJUR. Where do you live?

Mr. HAYES. In California, and I don't have to hire Chinamen either.

Mr. FRENCH. It has been stated here, and the Commissioner and the Assistant Commissioner of Immigration have discussed it somewhat, the advisability of establishing some sort of a bureau under the management of the Government for the purpose of distributing this immigration, or at any rate pointing out the various sections of the country where the labor of our immigrants would be desirable. What do you think of that? How would that affect the condition of immigrants coming to the larger cities?

Mr. BIJUR. Where would you have these bureaus?

Mr. FRENCH. I say the Assistant Commissioner suggested it. I have an idea that the most practical way would be to have at the immigrant station or at the port of entry somebody to recommend or give information upon the various parts of the country.

Mr. BIJUR. Both would surely be good, because disseminating the truth in regard to conditions of the country is bound to be of use to the country, whether it be for the immigrants or the inhabitants; yet I can say that I am not so enthusiastic about that, because I do not share this general impression that we have harmful congestion in cities. In other words, last summer I was out in Idaho——

Mr. BENNET. That is Mr. French's State.

Mr. BIJUR. Yes; and I drove 30 miles over the desert from Shoshone to Twin Falls City, a place that had been opened within three months by putting water on the desert. The desert was swarming with inhabitants. They went there because there was something to do. And the reason they come to New York is because there is something to do.

Mr. BURNETT. And nothing to do outside of New York?

Mr. BIJUR. The population goes where there is something for it to do. Give it all the information possible about where it is most needed, if it is possible for anybody to determine it; but in the long run there is only one thing that will determine where your population goes, and that is the great principle of supply and demand.

Mr. BURNETT. You think that will adjust it?

Mr. BIJUR. Has not the center of population moved west all the time? It will keep on. The more water you put on the western desert the farther west will go the center of your population. I don't know why anybody is worrying about the city of New York and other cities. I didn't mean to say that I am worrying about the poor people in the city of New York, and I am not worrying any more about them than those in Tucson, Ariz.

Mr. HAYES. There are not any there.

Mr. BIJUR. That is a dangerous statement to make. The reason people suffer in the city of New York is because of sickness, and the chief drain upon our charitable institutions is by reason of sickness.

Mr. BURNETT. Don't the congested condition add to that?

Mr. BIJUR. I have never found it so.

Mr. BURNETT. Don't you have tenements congested with people?

Mr. BIJUR. We have some dirty tenements, and they are always congested. But flats are congested. When you imply that the condition of tenements is dangerous to human life I reply that unfortunately we do not find that the people who live in the country are any healthier than the people who live in the city. Get at the facts. During the war the clerks in stores had greater capacity to bear suffering than the farmer boys.

Mr. HAYES. They were more used to it.

Mr. BURNETT. Most of you that can do it get out during the hot season.

Mr. BELL. If we have the same proportion of immigration in the next decade as we have had in the past twelve months will we not have harmful conditions?

Mr. BIJUR. Not so far as figures show. I can show you some things that are not so. When you ask me to demonstrate things on which I have no facts, I say that I do not know. Let me give you the figures which are taken from the census as to urban growth. The growth of population, urban population, from 1891 to 1900 was 7,600,000, in round numbers, the semiurban, small cities, 2,000,000, and the rural population grew 3,400,000; a total increase in population of 13,000,000.

Mr. BURNETT. That is running back six years.

Mr. BIJUR. No; 1891 to 1900.

Mr. BURNETT. How is it now?

Mr. BIJUR. I can not give those figures; I haven't got them.

Mr. BELL. I said that if we had the same proportion within the next fifteen years as we have in the past year, would not that produce a harmful condition?

Mr. BIJUR. I will answer that question. You are taking it for granted that the proportion is so enormously large in the past, which is not true. We have had these same arguments, this subject has been ripe for fifteen years, and I have heard the arguments that I hear here for the last eight years, and they made use of the previous figures which they had then. Let us take the figures we have now. The total increase is 13,000,000.

Mr. BURNETT. In what time?

Mr. BIJUR. From 1891 to 1900 the urban population grew 7,000,000, the semiurban 2,000,000, and the rural 3,000,000. Now, the total gross immigration, without allowing any deductions for returns,

deaths, or anything else, in that decade was 3,670,000, so that it is perfectly evident that the growth in the urban population and semi-urban population could not be together over 3,000,000 people.

Mr. BURNETT. Then it has only increased a little over 3,000,000 in ten years.

Mr. BIJUR. The net is figured by immigration experts at less than 2,400,000.

Mr. BURNETT. In the last twelve months it has been half of what it was in the ten years.

Mr. BIJUR. How do you make that out?

Mr. BURNETT. A million in the last year.

Mr. BIJUR. Have you figured the returns?

Mr. BURNETT. No; we have not.

Mr. HAYES. If there were more returns we would not be worrying.

Mr. BIJUR. I think you put the thing very pointedly. What are you worrying about; what is the worry about; what have these people done? You have said to me just now they have increased the population of cities. They have not, and you can not show it out of proportion to the natives.

Mr. HAYES. Isn't it true that the present immigration, almost all of it, settles in the great commercial centers; isn't that true; we will say 75 per cent of it at least?

Mr. BIJUR. I don't think so.

Mr. HAYES. Then these figures are still more misleading, because they show that more than 75 per cent of the population settled in five cities.

Mr. BIJUR. Of course, where most of the people are.

Mr. HAYES. Where the great manufacturing centers are.

Mr. BIJUR. You asked me whether they settled in the great commercial centers.

Mr. HAYES. Yes; New York City, Philadelphia.

Mr. BIJUR. I approach this thing with perfect impartiality. It does not make the slightest difference to me whether all the immigrants are kept out—

Mr. HAYES. Nor to me.

Mr. BIJUR. (continuing). Or come in. I have been trained not to draw inferences until I have facts. When I haven't facts I call them guesses. If you want to know what I guess—

Mr. HAYES. I ask your opinion.

Mr. BIJUR. I know in a general way that people go where people are, because there is more business there; but whether a larger ratio goes to the large centers, I don't know.

Mr. HAYES. You know, as a matter of fact, that fifty years ago the great bulk of the immigration to this country went to the west to settle up our lands and develop the country, and you know that there is no such place to put them now. You will admit that, won't you?

Mr. BIJUR. Yes, sir; and what is the inference?

Mr. HAYES. The inference is that they go to the great manufacturing centers and become common laborers, most of them, because it is the only place they can go.

Mr. BIJUR. Well, what of that. I don't see what you get out of that. That is simply stating that there are a great many laborers.

Mr. HAYES. In the State of California we have common laborers—

we have white people that are dependent upon fruit farmers for their existence. He gets the job, and the Chinaman does not, because there is not any demand for him. We have always managed to take care of our orchards and pick our fruit without him. He comes here because he can live cheaper. He can live and get along on what a white man will throw away. He cuts down the price of labor and the price of everything. When he comes in competition with the white man, the white man picks up his duds and goes off to the mountains, fixes up a ranch, or does something else, but virtually lives from hand to mouth. That is an absolute fact; that is no theory. It has come to my notice month after month and year after year since I have lived in California.

It is just exactly the same with other immigrants that come in. We admit them because they know they can get three times as much as they can get at home. My proposition is that instead of considering the alien's desire and his interest, that it is about time we considered our own and the interest and condition of the people that we already have here. That is what I say about the Jap and the Chinaman. I feel sorry for every man that is hungry, but it does not follow that I am going to take these people into my home. I am sorry for the Jap, because he has to work for 10 cents a day, but I don't want to bring him here to starve out the fellow alongside of me and my kinsmen, and I will not.

Mr. BIJUR. In all seriousness, this is not a question to be discussed for the sake of opinion. The Italian, it may be said, was not wanted, but he came here and dug the subway. Do you want to give the subway back or close it up because you don't want the Italians? At no time in the history of our country has there been greater prosperity than there is now and more work for people to do.

Mr. HAYES. I would not keep anybody out that we want that can add anything to the strength or the prosperity of the country.

Mr. BENNET. In your work with the various charity organizations, I think that you have stated that your work is not confined to them. Do you find that the immigrant to whom any one of your boards gives assistance remains in the majority of instances dependent upon your board, or do such immigrants cease after a while to receive relief?

Mr. BIJUR. I can speak directly only of the Russian Jewish immigrants. I can say there with almost absolute exactitude that we do not give any help to men who are healthy; in other words, the dependence with which we have to deal is due to sickness or widowhood or death. That more than answers your question.

Mr. BURNETT. One question right there, in regard to the Jewish immigrants. About what proportion of those—a rough estimate—of the Russian Jews are illiterate absolutely, can not read or write?

Mr. BIJUR. When you say illiterate you must tell me whether you include the word "Yiddish," a dialect.

Mr. BURNETT. Whether they can read their own language or any other language.

Mr. BENNETT. Yiddish is not a language, you know; it is a dialect.

Mr. BIJUR. Very few; they are very intellectual people.

Mr. BURNETT. Those are the very kind of folks that I am always glad to see come.

Mr. BENNET. Very few of their men would be excluded as illiterate?

Mr. BIJUR. Very few; Yiddish is not a language, it is a dialect.

Mr. HAYES. It is a language; it is their own tongue.

Mr. BURNETT. Do they read and write. That is what I had reference to.

Mr. BIJUR. Oh, yes.

Mr. BELL. Is it true that there were a million and a quarter immigrants dumped on the United States last year?

Mr. BONYNGE. Oh, no.

Mr. BIJUR. A million and twenty-six thousand. The best estimate that I have ever seen on that is a work on immigration figures by R. P. Faulkner, who is connected with the Census Department. But I know from the sailings that one-third of the number that get in and go out.

Mr. BENNETT. That is a number equal to one-third.

Mr. BIJUR. Then, of course, there are a certain number that come in—you separate the population into native born and foreign born—and a certain number of those who come in take the place of those who have died in that class; consequently, at the end of a decade, you will find that the total number of foreign born is infinitely increased.

Mr. GARDNER. Are you not making a mistake? Now, your figures of sailings in steerage show that 333,000 went out, and that includes citizens of the United States as well as aliens. When those citizens of the United States come back again they are not included in the 1,026,000 of other citizens; in other words, your figures of 333,000 outgoing—

Mr. BIJUR. They are all included.

Mr. GARDNER. If, for instance, we should find that 100,000 of those going out were citizens of the United States it would reduce those figures to 233,000.

Mr. HAYES. If you should find, besides, that a large number of those who had paid the head tax and were not citizens who had gone back for some of their people—

Mr. GARDNER. You must remember that we have no head tax imposed on the Mexican and Canadian border, and therefore to that 1,026,000 you must add the vast Canadian population which comes down into New England and the Mexican population which comes to the southwestern States; and there may be, for all I know, a similar population at other points. So I think it is fair to say that when you have the net thing all figured out there probably would not be much less than a net gain of aliens of 900,000 last year.

Mr. BIJUR. I was speaking of growth of population. It don't make any difference in that connection whether the people will go out as citizens, aliens, foreigners, or naturalized. Have you the figures of the number of citizens who come into the United States?

Mr. GARDNER. In the steerage, returning?

Mr. BIJUR. Citizens—how much is it?

Mr. HAYES. I should guess 100,000.

Mr. BIJUR. The total immigration?

Mr. BELL. Your figures from 1891 to 1900, the way you figured it out, were a little over 2,000,000.

Mr. BIJUR. Oh, no; 3,890,000.

Mr. BELL. You deducted something from that.

Mr. BIJUR. I say the net result, averaged by years. You speak of

the net growth of population. If you speak of the million that come in, that is the same figure we compared with that other decade of 1891 to 1900—3,690,000.

Mr. BELL. That is less than one-third in twelve months.

Mr. BENNET. I would like to put in the record that in the city of New York in 1890 the percentage of foreign-born citizens was 38 per cent of the population. In 1900, despite these nearly 4,000,000 of immigrants who came in that decade, the percentage was 37 per cent, a decrease of 1 per cent.

Mr. BIJUR. As a matter of information—assuming that a million immigrants came in last year, net—they seem to be getting along very well. I have not heard any complaint from any of them, and I have not heard any great complaint from anybody else. I do not know what all this trouble is about.

Mr. BURNETT. Suppose it keeps up for ten years.

Mr. BIJUR. First I should say let us see whether it does. It certainly won't keep up unless there is a demand.

Mr. HAYES. Is it the demand here or the conditions there? I want to ask you if the condition of your countrymen, the Hebrew population—

Mr. BIJUR. They are not my countrymen.

Mr. HAYES. Of Hebrew descent in the United States, in all respects suits you.

Mr. BIJUR. Whether the Jews in the United States suit me? I would make a double answer to that question. In the first place, the Lord never appointed me a judge of my fellow-men. As long as the Jew obeys the law—attends to his business—I do not care anything about that further.

Mr. HAYES. Whether he suffers or not?

Mr. BIJUR. Do you mean their condition?

Mr. HAYES. Yes; in which they are living.

Mr. BIJUR. Oh, I thought you meant whether they made good citizens or not.

Mr. HAYES. Oh, no; you and I would not have any controversy about that. I meant their financial condition, their economic and social condition.

Mr. BURNETT. In the South they are among the best we have.

Mr. BIJUR. It is not fair to put a question in that form, to ask me whether the condition of the people of the United States suits me.

Mr. HAYES. All right.

Mr. BIJUR. I would say "no," nor does the condition of England suit me, nor will it ever suit me until there is no suffering or poverty in the world. But that is a platitude.

Mr. HAYES. It is not a platitude. I will tell you that in my community I am a citizen, I am a part of the sovereign power of the country, and I am responsible for the conditions that exist there; and if I can change them I don't—

Mr. BIJUR. But how are you going to change them?

Mr. HAYES. If the conditions do not satisfy us now, then what are we going to do to make them better? Are we going to make them better by allowing 1,000,000 aliens, without any means of support excepting such as they get from common labor, to come into this country every year? Do you think that will improve the condition of

our country, our social, financial, or any other condition that we want to stimulate?

Mr. BIJUR. I have not the slightest doubt but that it will, as it has in the past.

Mr. HAYES. I don't think it will.

Mr. BIJUR. Do you go on the theory that the more workmen we have the worse for us?

Mr. HAYES. No; I don't.

Mr. BIJUR. What is the matter then? I read in a scientific journal a while ago that when a scorpion gets by a fire it strikes itself in the head and kills itself. The explanation of the student was that its eyes are very sensitive, and the fire pains them so that the insect strikes at the place that it thinks is making the trouble and kills itself, whereas, of course, what it wants to do is to get away from the fire. You feel dissatisfied with certain things; so do I. I feel dissatisfied, because some of my fellow-men are not getting along as well as they ought to. You say let us keep out the immigrants. I might say keep out the millionaire, destroy the railroads; anybody can say anything. But why stop immigration? I am waiting for the proper answer to that question. My mind is absolutely open. As to laboring men, we have jobs for every man who comes here.

Mr. HAYES. They have in my country.

Mr. BIJUR. What you need is population.

Mr. HAYES. We want a few more millionaires.

Mr. BIJUR. We all need money.

Mr. HAYES. I would not keep out the millionaire.

Mr. BONYNGE. You call it capital when they want it, and predatory wealth when they have it.

Mr. BIJUR. Just let me give you this out of the Census which was handed to me a few days ago. The clothing industry, you know, has been virtually monopolized by this poor Russian Jew who has come over and who lives so terribly below our standard of living, and who is suffering—that is the talk we all hear. A book has been written upon the clothing industry of the United States in which, among other things, it says that there were \$14,000,000 worth of ready-made clothing imported from Germany, say, ten years ago, and last year \$2,000,000 worth. He shows that the value of the ready-made clothing in this country within the last few years per annum was something like \$200,000,000 to \$240,000,000.

The census here shows that the wages paid in all manufacturing industries in 1880 were \$344,000,000; in 1890, \$434,000,000, a growth of 25 per cent. The wages in the clothing industry grew from \$285,000 in 1880 to \$416,000 in 1900, a growth of 46 per cent. While these very poor immigrants were coming in crippling the trade—

Mr. HAYES. What years?

Mr. BIJUR. From 1880 to 1900. One of the most interesting things about that, the crowding out of child labor in that business.

Mr. HAYES. Of course that would make the figures still higher?

Mr. BIJUR. Yes.

Mr. HAYES. The crowding out would bring up the general average?

Mr. BIJUR. It would bring up the general average.

Mr. BENNET. Because they pay the adults more money than they do the children.

Mr. BIJUR. Now (talking common sense and not exact figures), the Irishmen used to dig trenches; all my Irish friends now are wearing silk hats and frock hats—or a good many of them are.

Mr. HAYES. That is good.

Mr. BIJUR. And the Jew, who has been in the clothing industry, is now being driven out in part by the Italian. Everyone is being kicked upstairs. The Irishman was kicked up by the Italian; the Italian will, in turn, be kicked up by some other race. Somebody has got to dig the trenches. Now, until you revise our economic system, until you and I dig the trenches, somebody has got to dig them; and the man that digs them will dig them for just as much money as he can get. If you can provide a minimum scale of wages in the United States and enforce it you will do some good.

Mr. BENNET. They used to sing a song when I was a boy to the effect that “a dollar a day was very good pay to work on the Erie Railroad.”

Mr. BIJUR. Well, I will tell you this: Those of us who come in contact with the foreigner must admit that he knows better how to enjoy himself and that he spends more money on himself than the native American does.

Mr. HAYES. It depends on how long he has been here. He does after the first few years.

Mr. BIJUR. No; they start right in that way. There is no doubt that the amenities of life have been added to and that we have been taught to enjoy the pleasures and the luxuries of life by the foreign population.

Mr. BURNETT. A good part of it goes back home, though; does it not?

Mr. BIJUR. I do not know how much of it goes home. I do not want to go into financial theories; but the men that built the subway gave us the subway. They can not send the subway home. We are using it here.

Mr. BENNET. It is very convenient, too.

Mr. BIJUR. Yes.

Mr. BURNETT. How about the wages of the fellows that dug it? Do they take part of that sum back? Fifty millions of it, I believe, went back to Austria.

Mr. BIJUR. Possibly; but if you want to stop that sort of thing, stop our millionaires from going abroad and spending their money there, instead of using our American railways and buying the home product. You see you are trenching on the individual liberty; you are going into a field that has no end, if you seek to stop people from doing that.

Let us say that that is the evil at which you are aiming—you want to keep out a certain class of men who dug the subway, which we got, because they send their wages home. Well, why do you not do the more direct thing—prevent the people of the United States from going abroad and spending their money? It is because you dare not do that yet; and yet you are trenching on that very dangerous principle when you begin to deal with the movement of population based on economic principles.

When you keep out the criminal, when you keep out the pauper (I mean the habitual dependent, one who has a history of dependency), when you keep out the immoral person, when you keep out the

diseased person, you are exercising a certain police power which the American State has always been held to possess. But when you begin to figure on these very evanescent theories of not letting somebody come in who is a laborer because he may send some of his money abroad, you are face to face with the proposition that your own citizens are doing it all the time, and always have. Every time they buy a yard of silk abroad they are doing that very thing. Why do you not make them buy in America? You can not; that is the reason.

Mr. BURNETT. We are doing our best.

Mr. BONYNGE. We are trying to do it; we have put a tariff on that sort of thing.

Mr. BIJUR. Now, may I say one word further, gentlemen, because I do not want to appear to fear that question? I think that the only man that has had anything to say on immigration that is worthy of being listened to is the workingman, who says: "I am not protected against competition."

Mr. BURNETT. He is not, is he?

Mr. BIJUR. But the relation between goods and men is so different that protection on goods has not anything to do with protection on men.

Mr. BURNETT. Well, is not his objection good?

Mr. BIJUR. (continuing). He says: "I don't want people to come in here because they take away my job."

Mr. BURNETT. The way it is put to me is that we put a tariff on the goods that he consumes, but we do not put any tariff on the labor that comes into competition with the only thing he has to sell. That is what he says. Is not his objection good?

Mr. BIJUR. That analogy is exceedingly misleading. When we keep a man out he does not get here and we do not have any results of his work. When we put a tariff on goods we do not keep the goods out.

Mr. BONYNGE. We make them here.

Mr. BIJUR. We make some of them here, and we buy some abroad. Now, there is no economic analogy between those things at all.

Mr. HAYES. There is an analogy, but it is not perfect at all.

Mr. BIJUR. It is not perfect. Therefore the conclusion is not perfect. Moreover, I do not see that it ever follows that it is a good thing to keep workmen out of a country. According to that theory, the less population we have, the more people will have to do; and they forget that every workman is also a consumer.

Mr. HAYES. Right there let me ask this question: You have had a large experience with emigrants. Do you wish to say that this country is socially, intellectually—we will leave for the time being the commercial end out—better for having the large number of immigrants we have been receiving during the last five years? Do you take that position? In other words, is our population going to be elevated or deteriorated by the additions that have been coming for five years?

Mr. BIJUR. Your question is as to the immigrants who have come here during the last five years? I can not answer that, because they have not had time to be tried out. But if you mean, "Is our country any better for the infusion into it of, say, the Irish, the German, the French, the Italian, the Russian Jew, and those others?"—

Mr. HAYES. The Swedes?

Mr. BENNET. The Scandinavians?

Mr. HAYES. If you leave the Italian out I probably would not disagree with you. Just cut him out, and it is all right.

Mr. BIJUR. But what is the matter with him? Let us take the Italian.

Mr. BONYNGE. Your objection is racial, is it?

Mr. HAYES. No; not at all.

Mr. BIJUR. What is said against him? One of the things that is said against the Italian is that he is more liable to commit crimes of violence, and statistics have been adduced to show that. I have an exact reference to those particular figures. I think they were taken from the State of Massachusetts; and the criminality of, say, the so-called desirable races, like the Irish or the English, was compared with the criminality of the Italians, pro rata, and it was then found that crimes arising out of drunkenness had been excluded from those statistics. Now, as the Italians drink a table wine, but do not get drunk, and as we know that the English and Irish are somewhat addicted to strong liquor, and that most of their crimes come from intoxication, it is evident that that particular set of statistics was gotten up for the purpose of misleading. That is the fair inference; and as a matter of fact, so far as we know, the Italian is just as orderly as any other race, if not, perhaps, a little more so. Now, what is there against him?

Mr. HAYES. I am not speaking about orderliness at all.

Mr. BIJUR. What is there against him? He has brought us our music; he has brought us—

Mr. HAYES. If you will permit me, I want to say, in reply to the suggestion of Mr. Bonyngé that my objection is racial, that it is not. I have no objection to the Italian because he is an Italian. I know of Italians that are just as good citizens as we have. I am only speaking of the whole mass that we are getting—not because they are Italians; not because they are Polacks; not because they are Slavs. I am speaking of the class of immigrants that we are getting; and my question is whether you think that the bulk of them, or, say, half of them, are going to add to the strength of our citizenship in any way, or whether they are going to weaken it? That is the question that I am asking myself in connection with the Italians.

Mr. BIJUR. As Prof. Graham Taylor spoke upon that subject at the Portland National Conference of Charities and Corrections, I can not do better than repeat what he said. He said that these men had all the virtues that we had, and that when we talked of citizenship he did not know what there was that they could not do that we could; and the notion that they were more corrupt at the polls than other people had never been demonstrated, but that so far as there were rumors, the American-born farmer was said to be more corruptible than the resident of a large city, and that, finally, the men that did the corrupting were more apt to be native and were more reprehensible than the men who were corrupted. Now, I do not say that that is the truth. In fact, I do not think anyone has the right to draw inferences of that sort; nor did he state it as a fact.

Mr. HAYES. No; but let me put one question to you. Did you ever know an American citizen, or ever have any proof, any reliable information, that a native-born American citizen who has lived in an American environment ever sold his vote?

Mr. BENNET. Why, certainly; I have seen it done.

Mr. BIJUR. I can only tell you what I have seen in Indiana, the Hoosier State—the State of which, I think, it is always said—

Mr. BENNET. I will tell you of what I saw. I saw an American citizen, 60-odd years of age, whose father and whose grandfather lived here, sell his vote for \$1.10 on a day when the ruling price of votes in that community was \$1, and he stood out for twenty minutes for the extra 10 cents.

Mr. HAYES. I must admit that my experience does not extend to incidents of that kind.

Mr. BIJUR. Well, does your experience extend to such a point as that you can say that these foreign-born races do accept money for their votes?

Mr. HAYES. Oh, yes.

(At this point, after an informal discussion, Mr. Gardner moved that the general hearings on this bill be closed at 11.30 o'clock on Tuesday morning next, March 6, 1906, and the motion was unanimously carried.)

Mr. Bijur was thereupon excused, with the thanks of the committee, and the committee adjourned until Tuesday, March 6, 1906, at 10.30 o'clock a. m.)

COMMITTEE ON IMMIGRATION AND NATURALIZATION,
HOUSE OF REPRESENTATIVES,
Tuesday Morning, March 6, 1906.

Committee called to order at 10.40 a. m.

STATEMENT OF MR. JAMES H. PATTEN.

The CHAIRMAN (Mr. Howell). We thought we would ask Mr. Patten some questions, if he can give us any light. Have you anything special that you would like to state, Mr. Patten?

Mr. PATTEN. The principal thing that I would like to say is that the league—the Immigration Restriction League, of Boston—which has been following the question for years, begs to suggest that about everything is in print that can be said either for or against the regulation or restriction of immigration. In the second place, with regard to the state of public opinion, organized labor, the charities, commercial bodies, the press, and most students of the question, are urging additional legislation. A number of canvasses have been made of the southern sections of the country by disinterested and interested parties as to its wishes in regard to immigration.

In June the league began an extensive canvass of the South and West, over 5,000 letters being written. Those letters were addressed to state officials, local officials, various commercial bodies, large employers—

Mr. WOOD. Whom do you represent?

Mr. PATTEN. The Immigration Restriction League, of Boston, Mass., of which John Fiske, the historian, was president until his death. John F. Moors, of Boston, is now president, and Henry Holt, Robert Treat Paine, Nathaniel S. Shaler, Owen Wister, Joseph Lee, Senator Edmunds, and a number of such men are vice-presidents.

The canvass resulted, as did the canvass carried on by the Manufacturers Record, of Baltimore, and as a number of other canvasses have resulted, in showing that there was in the South a deep-rooted hostility to the bulk of the present immigration, and a demand for further restriction. Most of the answers received from that part of the country to our questions were accompanied by letters—very strong letters—

Mr. WOOD. What objections did they make in the letters?

Mr. PATTEN. Well, there were various objections. There was a feeling on the part of a great many of our correspondents that the introduction of certain classes of low-grade labor from western Asia and extremely southern Europe would play havoc with the negroes. I remember one letter in which the writer distinctly said that he would be very glad if those classes would come in and drive the negroes North, because it would give the Northerners a dose which he would like to see administered. There was great objection to the illiterate, many saying that the South had a great enough burden of illiteracy already. There was also racial antipathy on general principals to certain classes from the extreme south of Europe, such as Sicilians, Huns, Poles, Syrians, Greeks, and certain others. They said that one race problem was enough, and that they did not care to run the risk of another; that they did not wish to fly from present ills to ills unknown.

Mr. GARDNER. Would there be any objection to incorporating in this hearing a symposium as it appeared in the Manufacturer's Record, of Baltimore, of these letters from the Southern States?

The CHAIRMAN. If the committee so desires.

Mr. WOOD. I should think that might be valuable information.

The CHAIRMAN. If there are no objection on the part of members, we will include that.

Mr. GARDNER. Mr. Patten says he will submit it as a part of his evidence.

The symposium conducted by the Manufacturers' Record referred to by Mr. Patten, follows:

DIFFICULTIES OF THE LABOR PROBLEM IN SOUTHERN INDUSTRIES.

Representatives of the iron-mining and manufacturing interests, of general contracting, of railroad construction, of lumbering, of cement making and of the cotton-oil and fertilizer industries, employing much of the unskilled or partly skilled labor of the South outside of agriculture, tell in the following seven or eight pages, from their individual experiences, something about the embarrassments of the labor situation arising primarily from the fact that while the South has been advancing industrially by leaps and bounds during the past ten or fifteen years, the natural supply of labor has not only not increased proportionately in quantity, but has tended to deteriorate in quality. Coming from all parts of the South, the letters as a whole make an interesting and valuable contribution to the discussion of a question which is becoming more and more pressing every day. They deal especially, though not exclusively, with the negro, and their findings, as far as the particular group of writers is concerned, may be generalized as follows:

The negro as a class is tending to become less efficient as a laborer.

Inefficiency adds to the acuteness of the shortage of supply.

The immediate remedy is to be found in immigration, preferably of individuals from other parts of the country or from the north of Europe, with a growing inclination for Chinese or Japanese.

The criticisms are not confined to the negroes, for in some quarters the class of whites likely to be available for the kind of labor largely monopolized by the

negroes render no more satisfactory service and are less reliable and less efficient, though demanding even higher wages than the negro. But the discussion is concerned principally with the negroes, and, as touching them, the most significant fact is that with increasing opportunities for employment and with advancing wages the tendency is for the negro to work less steadily and less satisfactorily in every respect, though notable exceptions are considered. The most reliable of them are those who came out of slavery, and who have little if any schooling, while the younger generation produces the poorest laborers and in every respect unreliable. The good negro is the best laborer in the world, it is pointed out, especially in the cotton field, but he is a scarce article, and though best suited for manual labor under iron discipline in the South, he is regarded by some as the greatest drag on progress there, as the new generation takes no interest in duties, but seems to be inspired solely with a purpose to beat employers out of all time possible and to do the work in the most slipshod manner that may be permitted.

Some employers have to carry 200 names on the pay roll to get the average work of 100 men. Some, while paying higher wages, do not get more than half the work for which they pay, and many can not depend upon their employees from day to day, as the latter drift from place to place as it pleases them, and many do not care to work after payday until the week's earnings have been spent. Where they work they do fairly well what they are accustomed to, but are slow to take advantage of new conditions except such as decrease the amount of effort necessary, and they have no appreciation of an emergency. Many have to be watched all the time, as they are slothful and lazy, but obedient and do well under a proper sort of white foreman. They understand that in some particulars they have practically a monopoly, and are not slow to take advantage of that fact. Employers are obliged to take any negroes that offer themselves, and under a pressure to keep their plants in operation have no opportunity to weed out the sorry ones or to administer the proper sort of discipline.

It is recognized by men who make these criticisms that the negro is especially well adapted to the less skilled branches of labor, but that growing shiftlessness and inefficiency may prove a serious menace to the industrial welfare of the South. The remedies or preventatives named by employers of negro labor throw considerable light upon the negro character. There is a general demand for stringent vagrancy laws and strict enforcement of them, for an elimination of the "white" dive keepers and saloon men, for a breaking up of negro secret societies and excursions, for a special code of laws adapted to the negro alone and viewing him as an immature child instead of as a man, for a prevention of his being fed by women servants, from gambling and from opportunities to work only long enough to get money to travel from city to city. A full stomach often means a no-account man, and more money per day means fewer days of work in order to get the money necessary for drinking, gambling, and other forms of dissipation, the natural inclination of the negro being to trifle, to loaf, and frolic. In one town the difficulties were overcome by all the plants there refusing to hire men who left employment in any plant and also by prohibiting idlers from staying in any of the company houses, and it has been found practicable also to retain hands by hiring some good white man who can control from three to ten negro laborers.

In spite of marked deterioration, it is recognized that the problem is not absolutely insurmountable. One quality of the negro held to be valuable is that he shows no disposition to unionize or to strike in the aggregate, however embarrassing his striking as an individual may be. Married men permanently settled in a community are found to be quite stable, and unmarried ones in convict stripes and under guard do especially good work. The last is rather a discouraging view of the negro, similar to that which holds that he is closely related to the mule; that his traces do not slacken as long as the boss is around, and that in a warm climate where one can live for a week on one day's earnings, the negro is not forced to lay up stores against hunger and cold. But while some whites would undertake to prevent further deterioration by prohibitions against the natural failings of the negro, others would endeavor to overcome those failings by teaching the negroes the sacredness of family ties, by providing a better class of homes for them, by instilling a spirit of loyalty through fair and equitable treatment both as to wages and as to discipline, by encouraging them to become property holders and by giving them more responsible work. Such a course, however, implies generations of moral and mental discipline and training, so the quickest remedy is thought to be the teaching of

the negro that discharge from a job is a finality. In other words, he must be taught that he must either work or starve. The only means of making that teaching effective is by bringing the negro up against competition with a superior class of labor.

So immigration is looked to as the ultimate remedy. Men from other parts of the country are, of course, preferred, but it has been found difficult to obtain and hold those who have worked in cities and large towns. Here and there is found opposition to any foreigners because they might increase the difficulties, and a South Carolinian suggests that their coming might result in the State's being overrun with tramps. Italians seem to be the less favored of the foreigners. They are regarded as likely to foment much trouble upon the slightest provocation, as anxious principally to save up a few dollars so they may return to Italy and live there in comparative luxury the rest of their lives, and that certain classes of them, if care be not taken, would be worse in the South than the native negro. One observer writes: "For God's sake send your Italians to the coal mines of Pennsylvania or some other hot place. We are not in sympathy with the padrone or mafia systems. We love the flag and would die to protect it. We do not want it cursed with cutthroats and anarchy." Others have noted that the Italian in phosphate mines is no improvement over the negro; that where he has worked for five years he has made no advance; that the class brought into one community do not make the kind of citizens needed; that about 60 per cent of the arrivals should be sorted out; that however satisfactory the Italian may be in mining and agriculture, he is not fitted for manufacturing; one writer suggesting that for pick-and-shovel work he is satisfactory, but not having the natural aptitude of the Hungarian or Pole for handling machinery; and another, preferring the negro to both Italians and Poles, sees the only relief, however, in Chinese or Japanese.

On the other hand, it is believed that even Italians might be an incentive for the negro to thrift. It is argued that he is healthy, strong, and of great endurance; that he might be a good laborer in manufacturing, mining, or farming; that he has done well as a laborer in railroad building, has given satisfaction in lumber mills in Texas, and is supplanting the negro in the cotton-oil industry at some points in the Southwest. While the opinion is offered that Italian immigration might be fruitful of good results if properly handled, it is also suggested that it would be better for southern industry to have slower growth than to depend upon such immigration.

Russians and Hungarians have in some neighborhoods proved as unsatisfactory as Italians, and the general demand is for Irish, Germans, Swedes, and Norwegians, though one writer favors the admission of all races as laborers under a change of the immigration laws, but he excepts the negro races, and is especially anxious for Chinese and Japanese. The marked inclination for men of northern Europe is due to a desire to have those that can assimilate with Americans, and not be likely to become a permanent laboring class. There is a feeling that recruits for industry are to be had through a building up of an energetic white class in the rural districts of the South, taking the place of the negroes, and a practical hint to that end is that the southern railways and individual landowners shall unite in a concerted movement for dividing uncultivated but fertile lands into tracts of 50 acres, in building houses and furnishing farm equipments as a basis for a systematic and thorough canvass by properly equipped agents of the country districts of Norway, Sweden, and Germany for desirable settlers.

Some such intelligent work for immigration is imperative, for even if everyone in the South capable of working should be put to work the supply of labor would still be insufficient for its steady development.

The interesting and valuable symposium was suggested by a letter from Mr. Porter Warner, secretary and manager of the Howard Hydraulic Cement Company, Cement, Ga. Writing with reference to the possibility of dependence upon negro help altogether, he said:

"Touching upon the subject of negro labor in the South, we have been working negro labor for years, but, in my opinion, the South is soon to have to substitute white or other help besides the negro. While there are some good negroes with common sense enough to try and hold a job, it is a fact that the great majority are absolutely unreliable and shiftless.

"We find that an advance in wages has little to do with making the negro a better worker and less with making him steeper. It seems to be in their make-up that unless they can 'lay out' a day of two each week they will quit

a good job and good pay to accept a place where they can work off and on as they feel like it. We have one, possibly two, out of our hands that are otherwise turned. It is quite likely that within six months we will work white help together, and we note that this rule is being carried out by several other manufacturing plants in this section. Most white help will want to put in all the time possible, while it is the opposite with the negro, who is always glad to see a shower of rain or anything sufficient for him to knock off.

"If the South expects to depend on the negro in its manufacturing plants they will only operate about two-thirds of the time. There is good opening in this section for men who want steady work, but from years of experience with the negro there is no class so thoroughly unreliable."

This letter emphasized a phase of the situation in some lines of southern industry not always considered in discussions of the labor question. It so strongly impressed the Manufacturers' Record with the necessity for prompt action that it sent a copy of the letter to many representative southern manufacturers and others in a desire to assemble a mass of opinion upon which remedial action may be based. To that end it asked the following questions:

1. What experience have you had with negro labor and what is your opinion as to the stability and efficiency of the negro as a laborer in industry? Is he improving in efficiency and reliability, or retrograding?

2. Have you an ample supply of workmen, or is there a scarcity; and if there is a scarcity, what remedy for it do you suggest?

3. What, in your opinion, is the best method of improving the character of the negro as a workman and of increasing the supply of white workmen through immigration?

4. How do you regard projects for supplementing negroes with Italians in southern manufacturing, mining, and farming?

The replies in full follow:

IN THE IRON AND MACHINERY TRADES.

HARDLY EQUAL TO EMERGENCIES.

R. S. Ives, the Glamorgan Pipe and Foundry Company, Lynchburg, Va.:

Your circular letter of the 8th instant regarding southern labor supply has been received and read with much interest. Mr. Warner has sized the situation up very correctly. Our experience and observation tally very closely. Answering your specified questions, we would state as follows:

We only use negro labor in our yard force and on the charging floor of our cupolas. Some few of these men are very steady and have been for years; others are in and out, as suits their fancy. The writer personally has not been long enough in touch with the situation to express an opinion as to whether the negroes as a whole are increasing or decreasing in efficiency as laborers. They do fairly well that which they have done before and become accustomed to, but are very slow to understand or take advantage of new conditions, except possibly such as might conduce to decreasing the amount of effort which they have to put into their work. As regards appreciating emergency conditions, such as necessity for increased activity or work overtime to complete a job of importance, the negro does not compare at all with white labor. If we attempted to work our negro laborers overtime, they will simply stay away the next day. Very few of them desire to make more than the veriest living wage per week or per month, and if they can make this by working two-thirds or one-half of the time they seem well contented; but this is simply repeating Mr. Warner's statement, with which we fully concur, as mentioned above.

We have not an ample supply of workmen for any of our departments, and the labor situation is with us the most serious one with which we have to deal. We trust that your many inquiries will elicit some practical remedy, but at present we have no suggestions to make.

We do not consider it feasible to work white and negro laborers on the same class of work. Our experience has shown that neither will work efficiently in combination with the other. It is only where we can put all men on a certain class of work that we find we can use the negro labor. As stated above, this is only in our yard gangs and on the cupola charging floor. Neither of these classes of work require a very high order of intelligence. The only way we see to increase the efficiency of these men is to endeavor to instill in them a spirit of loyalty and a feeling that they will get fair and equitable treatment at our

hands. We have tried to bring white workmen from large labor centers like New York, but without particular success. Men accustomed to work near the environments of large cities seem unwilling long to remain away from such environments. We do not find that we can hold for any length of time more than 5 per cent of the men brought here.

We have had no experience with the use of Italian labor, nor do we know of any in this vicinity. The writer thinks, however, that this might be a suggestion which would be fruitful of results if properly handled.

LABOR INDEPENDENT AND UNRELIABLE.

A furnace manager of Virginia :

I have had charge of charcoal furnaces for thirty years and over, and have worked mixed labor—white and black—at all times. I don't think the colored man has improved in that time, but for the last five years all kinds of laborers have become very independent and unreliable owing to two things: First, the wages have advanced so much that they are able to live without working every day, as they did before that time; second, there being so much more labor than laborers, they felt independent—they could get work anywhere, and did not have to beg for work as they used to have to do. I found no difference in the color of the laborers; in fact, while I worked less colored than white men, the only men that worked every day, including Sundays, and saved their money, too, were two colored men. Nine out of ten men, in my experience, don't care whether they save any money or not. This to a very large extent accounts for the state of our laborers.

I have no idea what would improve labor in the South. If they had any ambition to better their condition we would not have this condition, but the majority only want to live, and the more wages they get the less work they need to do. Hence the only method is to get labor enough in the country so that it is a necessity with them to work every day or get no work. I have no experience with any kind except white native and colored labor, and can not say that one is better than the other. Neither is reliable.

DIFFICULTIES WITH APPRENTICES.

W. T. Spaugh, secretary and treasurer Salem Iron Works, manufacturers sawmills and woodworking machinery, etc., Winston-Salem, N. C. :

We have never had any experience with working negro labor and are therefore unable to give you any information from experience. From observation, however, we are of the opinion that the negro is not improving in efficiency and reliability, but is rather retrograding. The old negroes who came out of slavery are by far the most reliable. The present generation seems to be of shiftless and absolutely unreliable nature.

There seems to be quite a scarcity of skilled labor in our line; that is, machinists. One of the great difficulties we have to contend with is our apprenticeship system. We have no means of holding apprentices when they sign contract or begin as apprentices, as nine out of ten after they have worked a year or two, perhaps even less time, get the idea they are machinists, and they make application to other shops, claiming they can do better work than they really can, and are offered higher wages.

Every time when this occurs they go, regardless of contract they have made in regard to serving their time. Sometimes they are able to hold their job and sometimes they are not, and in consequence of this utter disregard of any contract or observance on their part there is not much to be expected from our southern shops making machinists out of apprentices. And it is difficult to get good, competent mechanics. We do not want the class of northern machinists that can be had, for the reason they are trouble makers, and we can not afford to employ them. Good, reliable men all have employment.

It would seem to us the best solution of the problem is perhaps to try the right kind of immigration, but just how to obtain the right kind is a problem.

Our opinion in regard to the Italians as laborers in the South, as far as manufacturing, mining, and farming is concerned, is that they, perhaps, would be the best class, all things considered, we can secure, although for our own particular line we should prefer good Germans, and our observation has been the few Germans that have come to this section have done well and made good citizens.

FOR REGULATION OF LABOR.

J. H. Harden, secretary and treasurer Weller Rolling Mill and Forge Company, Anniston, Ala.:

We think the conditions relative to negro labor are very much as given by Mr. Warner. We would say that in our experience of ten or fifteen years in working negro labor we find that they are retrograding in efficiency and reliability.

We have been handicapped for the want of labor for some sixty days or more, and we know of no prospects of improvement. The only remedy that we could suggest is to have strict vagrant laws and the enforcement of same.

We know of no method of improving the character of the negro as a workman, unless there is some method by which he could be compelled, when accepting a position, to sustain it a certain period. As to the supply of white workmen, we have our doubts as to its being successful.

We are of the opinion that it would take quite a number of years to supplant the negro with the Italian in the Southern mill, mine, and farm.

To sum it all up, it is our opinion that strict laws regulating vagrancy and compelling laborers and mechanics when accepting situations to fill them acceptably for a certain period of time, or, in other words, that they be not permitted to accept work and quit without sufficient notice, would relieve the situation materially.

"A COURSE OF STARVATION."

S. J. Fearing, general superintendent of the Dayton Coal and Iron Company (Limited), manufacturers of pig-iron, Dayton, Tenn.:

I have had experience with negro labor in Kentucky since 1882, and with the same in Alabama since 1892, and there is no question as to his retrograding considerably in this length of time. The efficiency has decreased at least 25 per cent. and, as for reliability, that is something that the average colored laborer knows nothing about.

At present, as we are only running one furnace of a two-furnace plant, our labor supply is ample, although we have none to spare, and we expect a great deal of difficulty as soon as we put the other furnace in operation.

The only way that I know of increasing the character of the negro as a workman is a course of starvation by supplementing him with better men. Whenever the average colored workman finds that his place will be readily filled and has no other opening, his efficiency and reliability are many times increased.

With regard to supplementing the negroes with Italians in the South, while I understand it is very well in the farming districts, what few cases I have heard of in the South have not given entire satisfaction. Three of them, I believe, were considered failures, but one of them gives very good satisfaction. I think that the importation of white laborers to this country would be more satisfactory from a furnace standpoint if it consisted of Hungarians, who, I believe, are a heavier class of men than the Italians.

NATURE THE ONLY CURE.

McMillan Brothers Company, manufacturers of turpentine stills, Mobile, Ala.:

He neither improves in efficiency or reliability. When such work as he can do is wanted to an extent that justifies paying him more than his actual necessities call for, he will only work as many days in the week as will be required to keep him up in a very poor way.

We have an ample supply of workmen as laborers, such as negroes and men without any trade, but we find skilled mechanics very scarce. We would suggest as a remedy that inducements be offered skilled mechanics and scientific men to settle among us.

Our opinion in regard to improving the character of the negro as a workman and good citizen is to "let nature take its course." Artificial means so far have proven a failure.

We suggest that great care be exercised in the selection of Italians or any other foreign people to supplement the negro labor in the South, for certain classes of Italians would be far worse for the South than our native negro.

We tell you that we can not tell you exactly what to do, but trust your efforts for the betterment of the South will be crowned with success.

FEELING AGAINST NEGROES.

F. H. Crockard, manager National Tube Company, Riverside Department, Wheeling, W. Va.:

"There is a very bitter feeling existing between the white and colored labor in the town of Benwood, as a result of which we have never made any effort to engage negroes in any form outside of office caretakers."

MUST BE CLOSELY WATCHED.

Paul J. Murphy, manager the Woodstock Iron Works, Anniston, Ala.:

"Have had thirteen years' experience with negro labor, and, in my opinion, there is very little stability or efficiency in the negro as a laborer in industry. He is simply to be watched all the time; otherwise very little work can be gotten out of him. I can see very little improvement in efficiency, but there is certainly a great falling off in reliability; in fact, a reliable negro is the exception, and there are very few.

"We have not an ample supply of workmen. There is a great scarcity in this district, and the only remedy is immigration. It must be taken in mind that the development of the South has been going ahead by leaps and bounds, while the labor supply has been almost at a standstill the past ten years.

"The best method of improving the character of the negro as a workman may be effected if, when he is discharged, that is final and he can not find labor again at the same plant. Under present conditions, labor being so scarce, the manufacturer is only too anxious to reemploy the negro whenever he is willing to resume work, but where there are some white immigrants to take their place permanently the negro might be more reliable. To increase the supply of white workmen through immigration we should improve conditions as to living and extend to them fair treatment.

"I regard favorably projects for supplementing negroes with Italians in Southern manufacturing, mining, and farming, for the reason that the Italian is healthy, strong, and his endurance is equal to any nationality I know of."

THE NEGRO FOR DRUDGERY.

Ed. L. Thomas, proprietor Valdosta Foundry and Machine Company, Valdosta, Ga.:

"Mr. Warner's conclusion as to the negro is certainly correct. There is no stability or efficiency in the negro. He is certainly retrograding, or else the progressive age makes him appear so. We have trouble in getting all of the common laborers that we need. Our remedy is that we have about half and half of white and black. We use home boys, working them in the most responsible positions and keeping the negro for the drudgery. I do not think that negroes can be improved in character as workmen. Apparently all efforts to improve them morally or spiritually only tend to make them less efficient and reliable. I feel that when you can work them at all that they are the most satisfactory labor that you can get. I fear the project of supplementing them with foreigners, for, from observation, we get a worse element and encounter a greater proposition."

MORE RELIABLE THAN WHITES.

M. M. Hedges, treasurer and general manager of the Chattanooga Pipe and Foundry Company, Chattanooga, Tenn.:

We have been working about 150 negroes in our boiler shop and about 300 in our pipe shop for the last sixteen years. We have found them more reliable and efficient than the white labor of the South. We also see a great improvement in their efficiency.

Common labor is very scarce, and we have had trouble for the past eight months in operating to our capacity. The only remedy that seems open is to get immigrants to fill this want.

Educate the negroes, provide a better class of homes, and in time pride will do the rest.

SATISFIED WITH MERE LIVING.

E. P. Cooper, manager Central Foundry Company, Anniston plant, Anniston, Ala.:

We have had considerable experience with negro labor for seven or eight years, and for common labor have found him to give a more satisfactory service than the native white man doing the same class of work. Only a very small per cent, however, of the negroes have any ambition whatever, and are satisfied with a mere living. Can not see that there has been any improvement in their efficiency or reliability.

For some months there has been a scarcity of labor, and do not see how the situation will be improved unless we get immigration turned this way.

The best method of improving the character of the negro as a workman is too hard a question for us to answer. It appears to us that the best method of increasing the supply of white labor would be to have agents in New York and turn the best element of labor this way. The South has never had any serious labor troubles, and we can not be too careful as to class of labor brought here.

Italians may be a better class for labor than the negro, but our observation has been that those brought into this vicinity are not such citizens as we need.

With the number of new industries continually going into operation in the South, it will soon be a serious question regarding labor unless something is done to increase the number of common laborers, as well as those who are more skilled.

FOR ENFORCEMENT OF VAGRANCY LAWS.

E. F. Lummis, president F. H. Lummis's Sons Company, manufacturers of cotton gins and cotton presses, etc., Columbus, Ga.:

Your circular letter of the 8th is very opportune, as the writer only a few moments before receiving same was trying to solve the very problem of negro labor in the South. This morning, as usual, about half of our force of negro laborers failed to make their appearance, and we had to take on some hands who applied for work, several of whom quit after working only a few hours, and this is nothing new, it occurring daily. Owing to the conditions of the crop being so grassy the farmers have been compelled to pay higher wages, but have not been able to get any more work out of the laborers than when they were paid less than at present, and the consequence is that they are now demanding more money everywhere for their labor, and the majority of them are not worth over one-half of what they are paid. Mr. Porter Warner's letter hits the nail on the head, and conditions are exactly as named by him. The negro is retrograding instead of improving.

Have not an ample supply, and the only remedy we can suggest is immigration to this section of the country of good reliable white men, and who will do twice as much work for the money the negro is now being paid.

The best method of improving the character of the negroes is to enforce the vagrancy laws and compel them to work. At present they live mostly by being fed by the women servants in the households of our cities, also by gambling and working a few days, possibly long enough to obtain enough money to go from one city to another.

In our opinion the best plan for supplementing the negroes is to induce Irish, Swedes, and Germans to come South, and hope that this will follow in the near future. As far as we are concerned, do not consider the Italians, such as are now coming to this country, desirable by any means, but we do know that the other nationalities named make good help and very trustworthy.

We feel sure that you will have the most hearty cooperation of all the southern business men, and wish you success in this matter.

MUST PICK AND CHOOSE AND SIFT.

T. J. Odell, proprietor Sheffield Iron Works, Sheffield, Ala.:

As a laborer the negro is utterly unreliable. As a human being we think he has improved vastly in the past thirty years, but as a laborer he has retrograded in every way.

We have an ample supply of negro help, as we do not employ many, but we have had to pick and choose and sift the good from the worthless, but all the larger industries of our section are constantly crippled for want of laborers and inefficient help sometimes to such an extent as to be compelled to shut down

temporarily. The only remedy, we think, is the importation of foreign whites, as the white laborers of the South are, in some ways, less desirable than the negro.

Encourage and assist him to become a property owner. Whenever he does this he at once becomes a different man, trustworthy and reliable. The best way to increase the supply of white labor is to repeal the "Chinese-exclusion act."

We of the South prefer the negro to the Italian or the Pole. The Germans, Dutch, Danes, Swedes, and Norwegians are all good, but the supply is limited, and we think the only relief is the Chinese or Japanese. There has never been any objection to them in the South, and we would be glad to have them, but deliver us from the Italian and the Pole.

We indorse what Mr. Warner says in full. He states the situation perfectly.

PREFERENCE FOR FURNACE WORK.

E. C. Means, president and general manager the Low Moor Iron Company of Virginia, Low Moor, Va.:

We have had thirty years' experience with the negro as a laborer. As a class, he is not efficient and reliable.

We have difficulty in maintaining a full force of laborers. We find a scarcity in this community.

We are encouraging the negro to purchase his home as the best method of improving his character as a workman. The only method with which we are acquainted of increasing the supply of white workmen through immigration is to obtain laborers through New York agencies.

We have already commenced bringing Italians to our mines. They can be obtained for outdoor work in large numbers, but there is great difficulty in inducing them to work underground.

During the past twenty years the per cent of white labor in our mines and quarries has increased, so that it is now more than 50 per cent of the total, where formerly only the foremen were white. At the blast furnaces the relative change has not been as great, there apparently being a preference on the part of colored laborers for furnace work.

NECESSITY AS A SPUR TO EXERTION.

Thos. S. Wheelwright, vice-president and general manager Old Dominion Iron and Nail Works Company, Richmond, Va.:

We have noted with much interest your circular letter of 8th July. The problem of negro labor is a very serious one, and we are heartily glad you are looking into the matter in a definite way.

We have had long experience with negro labor. We are decidedly of the opinion that they are retrograding.

We are confronted with scarcity of labor, as well as constantly annoyed by its inefficiency. We believe the best remedy is to import good Germans or Scandinavians.

We think nothing will so tend to improve the condition of the negro as for the employer to show himself independent of his services by supplanting him with more efficient white labor. The lack of ambition in the negro makes it necessary that the incentive of necessity be made as urgent as possible.

We much prefer the Germans or Scandinavians, as our experience elsewhere with the Latin races has been very unsatisfactory.

Would it not be possible to get concerted action through a suitable organization or company in which the Southern railways which own large tracts of land from which the timber has been cut, and which remains uncultivated, might join with private owners of other large tracts, putting them into a company at a low figure and for the company to get sufficient backing to build small homes, divide the land into tracts of 50 acres, put up a house and furnish farm equipment, the whole outlay not to exceed \$500, and have properly accredited agents canvass the rural districts of Germany, Norway, Sweden, with proper credentials which will assure the man of family that when he arrives in this country he will find a shelter and work at hand on a home which he can make his own by easy payments. By this plan we would get the best class, the thrifty working rural population. A persistent effort along these lines would, we believe, gradually work out a solution of this labor problem. The way to get rid of a bad thing is to put a better in its place.

What we need is more country people, and we can't expect to get them in large numbers unless it can be shown them before they leave the old country that they have a place to come to; hence the suggestion of the small home and farm already equipped.

WHITES HAVE THEIR FAILINGS, TOO.

W. J. Lodge, manager Shuster plant, Central Foundry Company, South Pittsburg, Tenn.:

We can sympathize with Mr. Warner in his troubles. While his has been with the negro, ours has been with the white labor. We have about 125 white men on our pay roll and 2 negroes, one of whom has been with us since we started our foundry in 1892, and who has not lost a month's time during that period. The writer's experience with negro help was limited to three years, during which time he was employed as shipping clerk at a large pipe works here at South Pittsburg, at which about 250 negroes were employed, and can say of the crew there that about 75 per cent of these men were good regular workers. The balance were Mr. Warner's kind. This standard was kept up by the cooperation of all the plants in town working in harmony with one another, refusing to hire men that left other plants just to change jobs, and watching that no idlers were permitted to stay in any of their houses.

We had the same experience with our white help this spring as Mr. Warner, Labor was very scarce, and our men got to taking a day whenever they felt like it. We could not discharge them, for we had no one to fill their places. This indifference was among the laborers. Our molders were working fairly steady. In order to encourage the men to better efforts I proposed to them that I would raise the wages 15 cents a day on all men that would work the six days a week, but to men that only worked five days the old pay would stand. The result was a strike, or at least a refusal to work under the conditions. So we were closed down for ten days. The men then concluded they would try it again. Only a few lost any time the first week, and when the pay came up their excuses for being off were not considered valid enough to entitle them to the raise. Some of them concluded they would not work for a company that treated them that way, and failed to show up for a few days, got other jobs, etc. But on the whole it was a success. Our pay roll will show that many men who only worked four and five days a week are now putting in full time, five days' work meaning only \$5.50, while six days' work mean \$7.50. That \$2 for the sixth day is a big premium; they are now all after it, and we have been very much benefited by it by having a full crew of men almost continually.

We have written this letter before answering your questions as evidence that conditions govern the efficiency of labor, either black or white. The conditions in the South are at an extreme just now. Labor is very scarce, and men take advantage of it, knowing if they lose out at one place they can find work at another.

In answer to your first question, from observation in our town, where a number of negroes are employed at our furnaces here, and from a few questions asked the superintendent of the furnace, he says he has the best gang of negroes at the furnace that he ever worked, and that quite a number of them are young fellows. This superintendent has only lately come here from southwestern Virginia, where labor conditions, as he expressed it, are fierce. So I judge we are as well off here as we have been for the last ten years.

We have not an ample supply of men in our town, because a large stove works has moved in here from Memphis, Tenn., and our other shops have increased their capacity and outgrown the natural increase of the town. Our men must come from outside places, and as most of the southern progressive towns are in the same fix as we are, we must look for help across the waters. For though magazine articles are proclaiming the miseries of the unemployed of New York and Boston our southern labor agents have been unable to induce any of these unemployed to try this good climate.

The best way to improve the lazy negro is to starve him out, and by not only starving him out, but by starving out the working negro that permits the lazy one to lay around his home.

We believe that some of the more hardy immigrants from northern Europe would be better men for our mining and manufacturing interests than the Italians.

PREFERRING WHITE LABOR MORE AND MORE.

Emerson Manufacturing Company, standard cultivators, mowers, corn and cotton planters, etc., Dallas, Tex.:

We have no extensive experience with negro labor in our plant at Dallas. We do not regard him as being either suitable or efficient. Once in a while we run across one who is efficient and reliable, but for the most part they are best fitted for manual labor under iron discipline.

There is always more or less scarcity of workmen in Texas, as most of the year is fitted for outdoor labor, and the negro is most in evidence during the cotton-picking season. In very many places the negro in the Southwest is an unknown quantity, and more places are offering less encouragement each year, preferring to give work to the white laborer.

We would not care to offer an opinion as to the best method of improving the character of the negro as a skilled laborer. Our various bards over this section of the country are endeavoring to bring in white workmen as immigrants. They are more steady, and the majority of them have an inclination to own their own homes and become of some real value to themselves and the community in which they live.

The project for substituting Italians for negroes for southern farming seems to be finding considerable favor, and if some way could be found to bring the able-bodied men from the large eastern cities who are suffering for want of work, they could be given remunerative employment throughout our farming districts.

OLDER UNEDUCATED NEGRO THE BEST WORKMAN.

D. S. Anderson, general manager Ocala Foundry and Machine Works, Ocala, Fla.:

I have read carefully what Mr. Warner has had to say regarding negro labor, and agree with him fully in what he says. From experience on the farm, in the shops, and manufacturing enterprises, will say that on the farm the older negro without education is the best labor we can get, while the younger generation is about the poorest in every respect, not reliable, indolent and careless, immoral and insolent.

Some days I have as many laborers as I can use, but maybe the next day will find me with only about one-third of what I had the day before.

For the scarcity of labor which we are confronted with I would say that there are two remedies, which, if properly enforced, will tend to overcome some of the troubles: First, a strict vagrancy law, properly carried into effect; second, make the marriage contract as binding on them as the obligation which they take when they become man and wife and stop the brutish way they are living with one another. By this I mean when a negro marries a woman, do not allow him to live with another in the same town or in another town or place until he has been divorced by law and then married again. As they live now, at least 25 per cent of them have taken up with each other, live together a few months, separate, one to go to one place and the other somewhere else and form another such alliance. Virtue slumbers with them.

Taking the two above and to them add the following, and I think it will help the South as a whole: Do not educate the negro. Experience of every day proves that the uneducated negro is the best worker and gives better service.

Am not very much in favor of the immigration of the Italian, as in some cases he has proven himself to be an equal of the negro in many ways. This is from observation in the phosphate mines only.

LIMITED AND UNSATISFACTORY SUPPLY.

Graham & Robinson, Grahams Forge, Va.:

We have used the negro in our works for a number of years. For heavy, hard work we prefer him to the native white man. The young negro is not near so good a laborer as the older ones, and the more education he has the less valuable he becomes as a laborer, and is disposed to work fewer days, and not near so reliable as formerly.

We have a very limited supply of labor, and what we have is not satisfactory. The better class of laborers have gone off to the coal fields and onto railroad work. We are at a loss to know what our remedy will be. A few Hungarians have been brought into this section, but they stay only a few days, and seem to prefer to get into the larger towns or cities, and are not adapted to our work.

We think our only remedy for a supply of labor for the southern requirements will be to get Italians or other desirable foreigners; and to make them efficient we must make propositions to give them such treatment as they will require, and not dump them out to take care of themselves like so many cattle.

We think there is very little hope for improving the efficiency of the negro, and especially so while there is so much work to do and so few to do it. He can live and work half the time, and that is all he cares for, as a rule.

SCARCITY OF SOBRIETY AND INDUSTRY.

J. S. Colyar, superintendent Sheffield Coal and Iron Company, Sheffield, Ala.:

According to our experience, the excerpt you quote from a letter of Mr. Porter Warner epitomizes the situation very well, and the conclusions he draws are very just. To avoid making our letter too lengthy we pass at once to your questions, calling attention to the fact that our remarks apply to all of the 600 men on our pay roll, with the possible exception of one or two.

After over twenty years' experience with negro labor I am of the opinion that while they are well adapted for the less skilled branches of labor, in stability and efficiency they are retrograding, and as they have no ambition, love of home, or other incentive to better themselves, it seems apparent that this shiftlessness and inefficiency will become a serious menace to the industrial welfare of the South unless steps are taken to remedy the situation.

Even at the present time of slackness in the pig-iron trade we are experiencing a scarcity of labor which is interfering with the output of our plant. It is not a scarcity of men, as we have some three names on the pay roll for every job; it is a scarcity of industry and sobriety which keeps the men from their work. All remedy, of course, is a theory. Ours is in three steps. First, a stringently enforced vagrancy law which compels the negroes to be at work. Second, the introduction of labor-saving machinery which will largely eliminate common labor and substitute for the large number of common laborers a few laborers of a higher or partly skilled type. Third, induce white laborers of a better class to come South and take these positions.

It is impossible to suggest a means of improving the character of the negro as a laborer. A few things that should not be done have thrust themselves on us with overpowering conviction. They should not be given more liberty, either social or political; they should not be paid higher wages; they can not be led. Liberty with them means license; more money per day means fewer days' work in order to get the money necessary for their drinking, gambling, and dissipation, and to attempt to lead them is to become the victim of their natural trickery.

We are favorably impressed with the project of substituting white foreign labor for the negro, and have had the matter in serious contemplation during the past few months. However, we are not quite sure that Italians are well adapted for our class of work, and would much rather have Hungarians or Polacks. These seem to have a natural aptitude for handling machinery which the former lacks. For ordinary pick-and-shovel work the Italian makes a very satisfactory laborer, and is easily to be desired in place of the negro.

We feel that you are striking the keynote of a subject that must be speedily taken under serious and careful consideration. We have but glossed the surface of the subject in this letter, but it is because the necessities of the case seem so self-evident to us that we hardly know on what points to amplify. Two points are absolutely fixed. First, that we must get other labor; and second, that we know of no other labor that is as unreliable and inefficient as the negro. We can not, therefore, hurt ourselves, and there is a strong chance of improvement, even in bringing in the Italian.

FOR RIGID ENFORCEMENT OF THE VAGRANCY LAW.

H. K. Spencer, president of the Birmingham Pipe and Casting Company, Birmingham, Ala.:

All of our laboring work is practically done by negroes. We could not run our business without them. Any two negroes are worth more to the manufacturer as day laborers than any three native southern white men. We also have a number of skilled negro workmen who are worth more to us than any southern white labor that we have been able to secure. We find the negroes just as steady workers, if not more so, than the southern white labor, and very much more tractable. There has been something of a scarcity of labor

for the past three months and which will continue, no doubt, until after the settlement of the coal strike. Other labor will become more plentiful after November 1, which is always the case in this district, as the farm work and street work is usually completed by that time. It would seem to us that about the best remedy for improving both labor condition and the laborer (both white and black in the South) would be a most rigid enforcement of the vagrancy act by all municipalities. Force them off from the street corners and out of the dives and either into the chain gang or into the factories and mines. Force those that are here to work steadily by influencing foreign or interstate immigration. The more there are applying for work the less need you will have for their services and the steadier they will work when they once acquire it. Make a skilled workman of every steady-working negro, and you will force the white workingman to be steady in order to hold his job, and at the same time it will improve the general status of the negro.

NO EXPERIENCE WITH NEGROES.

The Chester works of the American Sheet and Tin Plate Company, Chester, W. Va.:

We know nothing regarding negro labor.

We have plenty of other workmen.

IN OIL MILLS AND FERTILIZER WORKS.

NEGRO BEST FOR CERTAIN LINES.

Ernest Lamar, president International Cotton Seed Oil Company, Selma, Ala.:

We have three oil mills, and we use negro labor nearly altogether. In the South for the Southerner, for all common labor and industries that require no skill, negro labor is the best that we can get. We need no Italians, Greeks, or Swedes as common laborers. As a general thing the negro is obedient, but slothful, improvident, and lazy; desires continual watching and urging. They have no ambition—of course a few exceptions—to lay by any funds. They are paid more wages at present than at any other time in their history. The average negro with a dollar in his pocket is happy and does not care to labor until his week's earning is spent. This makes labor very scarce on Saturday and Monday and would interrupt manufacturing industries that required any skill. The negro will never be a better laborer than he is to-day.

With twenty-five years of experience, with an average of nearly a thousand negroes employed daily, the above is our observation. In fact, negroes desire more to congregate to the city now than they ever have, and many cities are enforcing stringent vagrant laws. The negro cares little for quality of food and drink or clothes.

The farming interest is suffering because of the negroes going to cities and public works to handle a little cash. Farm importation of labor will be a necessity in a very few years.

MISTAKE TO MIX WHITES AND BLACKS.

S. T. Carter, manager Americus Oil Company, Atlanta, Ga.:

We have had several years' experience with negro labor, and, with the exception of possibly a half dozen negroes that have been with us for the past several years, the great majority of our negro help seems to be getting more and more unreliable as the years pass. In the case of the few "faithful" mentioned above, in order to hold these we have found it necessary from time to time to increase their wages, but we have attributed this necessity to local causes more than anything else. What we mean by local causes is the establishment of new industries, each one of which always needs a certain amount of reliable help, and the demand for reliable help simply being greater than the supply.

We have never had any experience with Italian labor, and are not prepared to give you any answer on this point. It is our opinion that mixing white and negro labor in the same class of work is a mistake.

INDISPOSITION TO WORK.

Joseph Dennee, secretary and manager Gulfport Cotton Oil and Fertilizer Company, Gulfport, Miss.:

We would state that our experience has been with negro labor anything but satisfactory, and it is growing worse from day to day. He is anything but improving in efficiency and reliability.

We have suffered not so much from scarcity of labor as we have the indisposition on the part of the negro labor to work, and we are at a loss to suggest any remedy other than to employ white labor whenever we can secure it.

We consider it a loss of time to indulge for a moment in considering the best method of improving the character of the negro, and we are fully in accord with any movement that will give us an abundant supply of white labor.

We are rapidly supplanting all negro labor with Italians or any other white labor we can secure, as we find them more stable and efficient.

FAVORABLE TO ITALIAN LABOR.

E. F. McRae, of McRae Oil and Fertilizer Company, McRae, Ga.:

We have found negro labor very unsatisfactory and unreliable, and we find no improvement.

Workmen are very scarce, and we see no remedy without getting white labor from other sections.

We can not advance any plausible remedy for improving the negro labor.

We regard the Italian labor the very thing for southern industries of every kind—we mean the better class of Italian labor.

REQUIRES TO BE MANAGED.

Charles S. Reid, Woodbury Oil Mills, manufacturers of cotton-seed products, Woodbury, Ga.:

Experience of six to ten years in cotton-oil manufacturing, using negro help throughout the mill, with the exception of foreman and assistant. Believe under proper management the negro is the best laborer to be had in the oil-milling business. Can not see that the negro is improving or retrograding in his efficiency or reliability. To us his nature has always been the same; he requires to be managed.

We are not now, nor have we ever been, put to any great inconvenience to get laborers.

Have formed no opinion along this line, not having had occasion to give the matter very much thought.

In regard to supplementing negroes with Italians, do not think it would be at all practicable to mix the two in the same plant, and we for one should not care to exchange our negroes (whose natures we know and understand) for a class of which we know nothing, but believe are capable of fomenting a great deal of trouble on the slightest alleged provocation.

"QUITE A TOUGH PROBLEM."

W. C. McClure, manager Columbus Mill, Refuge Cotton Oil Company, Columbus, Miss.:

We have had considerable experience with negro labor, as we work negro labor almost entirely in our oil mill and fertilizer department. Negro labor being the only labor we have employed and the only available labor, we can not say that it is the best labor for the oil-mill business, as some mills claim. The negro is not improving in efficiency or reliability, but, on the other hand, he is retrograding at a rapid rate.

We have an ample supply of workmen at present, but anticipate a scarcity of labor and trouble therefrom during the coming fall and winter, similar to conditions last season.

We hardly feel able to advance an opinion as to the best method of improving the character of the negro as a workman in industries, this being quite a tough problem. We feel that the best remedy is to import a good class of white labor, even should it be foreign immigration, into the South and place the negro in the cotton fields, where he belongs.

We regard very favorably the prospects of supplementing the negroes with Italians or some good foreign element in southern manufacturing, mining, and

farming. This would doubtless serve as an incentive to the negro to do better work and be less shiftless. It would be quite advisable, in our opinion, for the town or section that contemplates importing foreign labor to provide suitable homes for the welfare, comfort, pleasure, and attraction of such foreign labor beforehand, as every management should be made to make the experiment a success from the start.

I am very glad, indeed, to note that the Manufacturers' Record is so strongly impressed with the necessity for immediate action in this matter.

NEGRO AND MULE RELATED.

Fort Smith (Ark.) Oil Company:

The negro is by far the best laborer that we can get.

A scarcity—need more of them in this section of the country.

The negro and mule are closely related. You first convince him that the "iron-rod" rule is yours and that he is at the wrong place if he is looking for a snap, and we find that his traces do not slacken as long as the "boss" is around. We have negro foremen "bosses" in our departments. The negro is the hardest taskmaster.

The negro is the best cotton farmer in the world.

TO MAKE NEGROES TRIFLING AND UNSTABLE.

J. H. Harrington, manager Planters' Oil Mill, Monroe, La.:

Within the past few years the labor problem has become a very serious one for the South. Until six or eight years ago there were but few manufacturing industries, sawmills, etc., in our section, and but little demand for labor outside of the farms. Wages were low and laborers were dependent. Now all of this has changed. Big demand for laborers, wages high, laborers scarce, and, of course, independent. The negro is intoxicated with a sense of freedom and independence and importance not heretofore experienced.

To one who knows the nature of the negro this should not be surprising. With an abundance of laborers and reasonable wages the negro would become himself again—docile and tractable. This, in our opinion, will come about in due time. The importation of white labor would, of course, bring a normal condition all the sooner. To increase the wages of negro laborers makes them more trifling and unreliable, giving them a living and more time to loaf and frolic.

We speak of the negro as a race. Of course, there are some negroes who are ambitious and desire to accumulate property, and hence are engaged all the time. Do not believe you will find one such in twenty-five. All most of them want is an easy living without much work; hence this class are not benefited by higher wages, and the community has been injured by idle capital, i. e., labor unemployed and lower morals.

The negro is not stable or efficient, but we think is improving; is not reliable, nor is there any improvement.

Have all the labor we need for past season.

Be patient, firm, independent, yet kind and solicitous, showing them that you have an interest in them as laborers and in increasing their efficiency. Insist that they show stability of purpose and interest in your work and results.

In our line of business do not think supplementing of the negro with white labor is feasible, for reason that some work about the mill is not cleanly, i. e., greasy, and have seen no white men who would do it. If we could get the white men they might do better at same wages, but doubt it. So we are disposed to favor negroes in our work for the present. Negroes have shown no disposition to unionize or strike, which is another consideration in their favor.

A FULL STOMACH MEANS A NO-ACCOUNT MAN.

W. E. Henkel, manager Ruston Oil Mills and Fertilizer Company (Limited), Ruston, La.:

For the past five years we have worked from 30 to 50 negroes in our oil mill, and our experience coincides with Mr. Warner's as to their indifference about work. A full stomach means a no-account hand in most cases. It is the excep-

tion that he appreciates his job enough to stay with it, and the rare exception where he aspires to excel in his vocation.

During bad weather we have an excess of help, due to the negro's appetite and his love for a warm job under shelter. The balance of the time we are never quite sure of a full crew on the night force.

Relief is not to be found in the "white trash" of the South, which is so much worse than the negro that he won't consent to learn, lest he might be in demand and thus have no excuse to live on the labor of his wife and children. The remedy is more likely to come in the importing of labor, preferably from northern Europe, as nature is so generous in southern climes that her children grow more indolent as the equator is approached, and what we need is the energy of northern countries, where one must work or starve.

The negro can best be improved by a special code of laws adapted to his race alone; laws viewing him as a child instead of a man, since his race is immature and he is less keen and acute in all his perceptions, especially of right and wrong. He is 5,000 years back nearer the animal than the white race is, and should be so considered. His punishment should be corporal principally, and he should stand toward his white employer as a ward to his guardian, both being held rigidly responsible to the State for fidelity on the one hand and just and humane treatment on the other. This would not contravene the fourteenth and fifteenth amendments any more than existing disfranchisement laws do, and as common sense will finally triumph over the demagogue and fanatic who try to legislate black white, and who might as well try to make two and two five, the sooner we come to it the better. Only some such method along common-sense lines will lift the white and black races jointly to their highest cooperative efficiency.

If the negro is to be supplanted, I prefer North country blood for reasons stated, but the transition is too great to be hoped for in this generation. Even if done, the negro and his healthy appetite will still remain to be dealt with, and the plan that best enables us to get something in return for his keep is the one to encourage.

At best the negro problem is still unsolved, and there is no hope of a solution so long as civil equality is insisted on. Oil and water won't mix, and all the statutes of all the lands on earth won't alter the fact one iota.

TIME AND PATIENCE THE BEST REMEDY.

W. H. McKenzie, secretary and treasurer Montezuma Manufacturing Company, Montezuma, Ga.:

We have had considerable experience with negro labor, and it is a fact that the majority of them are without stability and lacking in efficiency. In our opinion, however, they are improving rather than retrograding in these qualifications, and believe that by reason of their superior leadership and training and their great advantages and opportunities at this time as compared with that of the past, we will see a greater improvement along these lines in the future, and so long as these conditions exist the only plan or method to adopt in improving the character of the negro as a workman will be time and patience.

Looking at the question from this standpoint alone, we do not regard the situation to be so very serious. We consider the real and serious problem confronting us to be the increasing scarcity of this labor from year to year, brought about by the wonderful and rapid development of the South, her numerous industries springing up and calling for help, thereby creating a demand greater than the supply. This problem will grow more serious from year to year as we make further development along industrial lines, which, in the natural order of things, will be done.

The only remedy is a systematic and persistent effort to induce a desirable class of immigrants to move this way. It is either to accomplish this or Southern industrial development will be checked.

We do not look with favor on the Italian, but with the continued advertising of our wonderful advantages and resources by our commercial and industrial journals (among whom yours shines conspicuously as having greatly benefited the South), together with an organized effort on the part of Southern industries, we believe that it will be possible to secure the most desirable of immigrants.

We trust that through your efforts something will be accomplished.

WHITE LABOR, TOO, UNRELIABLE.

E. A. Blain, general manager Fort Worth Cotton Oil Company, Fort Worth, Tex.:

In our oil mill, especially in the press room and meal room, we work negro labor exclusively, and find it the only labor we can use to advantage in this section, as white labor is too unreliable and too high priced for this class of work. We do not think there has been any change in the average negro in regard to efficiency and reliability. We have very little trouble in getting all the labor we want, as negroes seem to prefer this kind of work to any other during the winter months. We can not suggest any method of improving the character of a negro as a laborer. Having never had any experience with Italians, we do not care to express any opinion in regard to supplementing negroes with Italians.

NEGRO PREFERABLE IF PROPERLY HANDLED.

J. H. Fulford, manager the Farmers' Oil and Fertilizer Company, Dawson, Ga.:

My experience in handling negro labor for the past several years is very similar to that expressed by Mr. Porter Warner. I have long since learned that increasing the pay to the shiftless negro does not at all increase the service you get out of him; in fact, it tends to lessen the number of days he will work for you. In the oil-mill business it is real hard to get white labor in this country that will care to do some of the work that has to be performed in the mills, but where you can get them I have found that in a good many cases the labor of one good white man is worth two of the negro. Now, in regard to the four questions you want answered, I give my views as follows:

I have had fifteen years' experience in handling negro labor, and that for some classes of industry the negro labor is preferable if properly handled. I do not believe he is improving, but, on the other hand, he is retrograding. (I beg to explain that I do not believe the negro is efficient labor in the operation of cotton mills, machine shops, or any like industries.)

Up to the present moment we have not experienced any alarming scarcity of labor in this section, although it now appears that there will be some scarcity very soon. There seems to be enough labor here if all could be made to work, and I think that if the vagrant law was well enforced that a great lot of this trouble throughout the South would be eliminated.

It is my opinion that one good step in the direction of better improvements to the negro as a laborer or workman would be accomplished by a thorough organization of the industries who employ them throughout the South. I do not know that this could be accomplished, but it strikes me that if it could be done that much good could be accomplished along these lines. Another better plan, too, to keep them busy is for the officers of the country to keep in mind the matter of our vagrant law. I notice in all the small towns of the South you will find two to half a dozen negro dives, and these are always crowded with a lot of idle negroes who seem to have time to loaf. I think these should be looked after.

I do not believe that to supplement the Italian labor for the negro of the South would in the end make the best thing for us. I think that in after years we would have trouble with them. I think we had better correct the negro and use him, or else let's get rid of him. I prefer to straighten him out and put him to work.

THE NEGRO "FINISHED."

S. Woodall, manager San Marcos Oil and Gin Company, San Marcos, Tex.:

We have Mr. Warner's experience exactly.

We have labor plenty, of the kind.

There is nothing to be done for the negro; he is finished.

We can get plenty of Mexicans, but they are very little better than the negroes.

WOULD NOT CHANGE FROM NEGROES.

Hugh Williams, manager Taylor Cotton Oil Company, Taylor, Tex.:

In our oil-mill business the negro is all right. He is improving.

At cotton-picking time labor is scarce, but we are able to get enough by advancing wages.

White man no good here for common labor. He does not want to stand up to straight hard work.

Would not change the negro for any other in our business.

MIGHT BE OVERRUN WITH TRAMPS.

J. A. Robinson, planter, and bookkeeper of the Easley Oil Mill, Easley, S. C. :
The negro is retrograding.

The remedy is to tell negroes that if they don't do better we will have to resort to immigration.

We don't want immigration if we can get along otherwise.

The negro is with us to stay. Immigration added to our negro population would be more than we could bear. We would be overrun with tramps.

EXPERIENCE OF GENERAL CONTRACTORS.

ITALIANS FOR MINING AND FARMING.

B. F. Kramer, contractor, Charleston, S. C. :

I have had many years' experience with negro laborers in my business. He is certainly not improving in efficiency. He is retrograding in this locality. What you say of him is true. Increase in pay does not stimulate him. He is always anxious for some excuse to stop work.

There is a scarcity of skilled workmen. Ordinary laborers are abundant. Will eventually have to procure skilled help from other localities.

In my opinion there is no way of improving the character of the negro as a workman. He will be as improvident in years as he is to-day. Am in favor of white immigration.

Think Italians would suit very well for mining and farm work. Have seen them mining phosphate rock in competition with the negro.

NEGRO HIS OWN GREATEST DRAWBACK.

A general contractor of Florida :

I have been employing negro labor for over twenty years (from 400 to 500 negroes). The negro as a laborer, skilled or unskilled, has only a minor standing either for stability or efficiency. The unskilled laborer does not improve in either; the skilled laborer, however, has slightly improved in both.

We have an ample supply of labor, both skilled and unskilled, but they will not work on the average more than two-thirds of their time.

As for the remedy, there is none, in my opinion, nor can one be found in a State like Florida, where a man can live, if he wants to, on \$1.50 per week, and can earn his week's living in a day. The temperament of the negro is such that he is satisfied with little, and in warm climates the danger of hunger and cold is not great enough to force him to lay up stores for a stated period of idleness, as mankind is forced to do in colder climates.

The greatest drawback to the improvement of the character of the negro is the negro himself. As a class they have no regard for the marital tie, and it does not seem possible to improve to any extent a race of people that have but small regard for the home as an institution. The supply of white workmen through immigration holds out but very small hopes; the average white man is not inclined to live from hand to mouth like the negro, and does not want to compete with him.

I have no faith in any of the projects for supplementing negroes with Italians. My experience personally with the Italian laborer is limited, and not of such a character as to make me either enthusiastic or even optimistic on the subject.

One great cause of our troubles on account of labor not working steady is the railroad excursion. If any means could be found to eliminate this feature, a prolific cause of trouble would be removed. Mr. Warner's letter covers many of the objections to negro laborers, but his remedy, I am sorry to say, hardly applies to Florida.

OPEN THE DOOR TO CHINA.

C. W. McCrea, manager Missouri Construction Company, general railroad contractors, Oglethorpe, Ga. :

Our experience with negro labor covers a period of something over twenty years in Missouri and Arkansas, and very recently here in Georgia, and our

operations have embraced farming, railroading and lumbering. Everywhere and in every industry in which we have been engaged we have found the negro labor to be sadly inefficient and thoroughly unreliable, and, if any difference, we are inclined to think he is becoming rather worse than better.

As a rule, we are always short of the force we actually need in carrying on our operations, owing generally to the disinclination of the darky to labor a single day more than he is compelled by his necessities to do. Understanding his idle, shiftless, improvident disposition, it is obvious that an increase of wages only makes him worse. Bigger wages simply means to him that he can get along and exist on a correspondingly fewer number of days' labor. Vigorous vagrancy laws vigorously enforced seem to afford the only practicable means of compelling him to work.

We have no suggestions to offer as to means of improving the character of the negro. The undertaking seems hopeless. Immigration of white labor will be slow, because the South is not an attractive field to white labor from foreign countries or the North.

We are not favorably disposed to the Italian laborer, for, while he is thrifty and wants to make all he can, he shirks his work on all possible occasions and requires constant watching and driving.

Open the door and let in the Chinese.

CAREFUL ESTIMATE OF THE NEGRO CHARACTER FROM LONG EXPERIENCE.

A contractor of Alabama and Mississippi:

My experience in working negro labor extends continuously from 1886 to the present time; engaged in railroad construction, quarrying stone, and the mining of iron ores and phosphate rock in Alabama, Tennessee, Florida, and Mississippi, total number of employees varying from 200 to 2,000, with an average of about 500, 90 per cent of whom were negroes. My opinion is that the negro, as a laborer, is retrograding both in efficiency and reliability, and that, as a laborer, he is fully 25 per cent less efficient to-day than in 1886.

At the moment I have an ample supply of workmen as a result of the fact that every year I secure a number of the students from the Tuskegee Normal Institute at Tuskegee, Ala., during their vacation from June 1 to September 1; otherwise I would be very short of laborers, of which there is the greatest scarcity throughout the Southern States. I see no prompt remedy for this scarcity of labor, with increasing severity, until relieved by immigration or by a period of severe depression in all lines of business and industry.

As to any method by which the negro can be improved as a laborer in reliability and efficiency within a period of time that would be of any material or practical interest to the present or nearby generations, I must confess to great skepticism. Improvement at the negro's own volition can result only from generations of discipline and training, moral and mental, by which he shall be raised in the scale of humanity, an undertaking too discouraging for the practical man of affairs, and chiefly interesting to theoretical philanthropists, generally ignorant as to the serious questions involved and wholly without practical knowledge of the negro as he is.

Innately and naturally the negro is a simple tractable, lazy, shiftless, and irresponsible being, with little or no proper ambition, incapable of right-doing under temptation, easy of control, but unequal to absolute freedom, and consequently retrograding under same, morally and physically. As a voluntary laborer he will work only to earn the immediate and absolute necessities of life, which, under the prevailing scale of wages and cost of living in the Southern States he can accomplish on an average of two-thirds time, as is shown by the fact that all employers working negroes, in order to run to capacity, must carry nearly twice as many names on rolls as men actually worked.

This opinion being correct, it would appear that the prompt and best remedy lies in reducing the negro to the necessity of working regularly in order to live, this to be supplemented by the assistance of the enforcement of proper laws against vagrancy. In my judgment, however, even with all labor at work in the South there would still be an insufficient supply for the further development of her resources, and immigration is imperatively necessary. Under existing laws governing this the situation would be relieved by the heavy flow from European countries during the course of a few years, but this relief would be slow in the Southern States on account of that prejudice, largely due to wrong notions as to the climatic conditions as affecting health and to the presence of the negro, held by the northern nations of Europe. Moreover, I do not consider the indis-

criuminate admission of European immigrants as desirable or wise under the laws now defining citizenship, especially in the case of the Latin races, and think it best not to encourage such immigration with the view to making good American citizens on such short notice.

In my judgment the proper solution of the labor question in the Southern States—a prompt solution being imperative for their development—lies in the enactment by Congress, as promptly as possible, of such laws as will admit laborers—immigration without citizenship, except under proper and rigid requirements after long residence. I would favor admitting all nationalities except the negro, affording desirable laborers, under proper restrictions as to numbers. Especially would I encourage the Chinese and Japanese, who make good laborers, and will come as such, without any notions as to permanent citizenship.

The foregoing are my opinions on the subject, which is, in my opinion, a large one, and I apologize for my inability to more briefly cover the ground.

LUMBERING AND ALLIED INDUSTRIES.

NEED NORTHERN EUROPEANS.

W. E. Guild, treasurer Finkbine Lumber Company, Wiggins, Miss.:

We are quite extensive employers of colored labor in our sawmill operations, and we find that the negro is very unstable and unreliable as a laborer. There are but very few that can be depended upon to work every day. A few take an interest and become proficient in the work they are doing, but a greater number take no interest whatever.

In regard to the supply, will say that some months we have an ample number to run our works, and then next month probably we will be short-handed in every department. They disappear without any cause, and no one knows what has become of them. They simply drift away to some other place.

We are entirely at a loss to know how the negro could be improved upon in character as a workman. What the sawmills of the South need are Norwegians, Swedes, and Germans, as they make the most proficient sawmill men, and there is an opening for a great number of men of this character.

In regard to supplementing Italians for negroes in the sawmill business, will say that they are a failure. They may be all right as plantation laborers or general farming, but they are of no more use in the manufacturing of lumber than the negro. I do not think the Italians would ever prove a success in any kind of a manufacturing business. They might do as common laborers on railroad work or on plantations.

We hope that you will be successful in interesting labor in the South, as it is one of the great problems of this country.

IMMIGRATION THE REMEDY.

Camp & Hinton Company, manufacturers of yellow-pine lumber, Lumberton, Miss.:

We have employed as many as 600 negroes at a time in our plant, and they are becoming more no-account and trifling every day.

Labor is scarce with us, and we have expended large sums in the last quarter in securing a force to run our plant, and have not confined ourselves to any color or nationality. We know of no remedy for the labor situation except immigration to the South.

As to our opinion of the best method of improving the character of the negro as a workman, we would refer you to the good Lord or to some spectacled New England lady.

We have employed considerable Italian labor, but it needs sorting out of about 60 per cent. Danes, Norwegians, Scandinavians, and Germans are the best immigrant labor, and can not be beat when acclimated.

NO GREATER DRAG ON THE SOUTH.

Empire Lumber and Manufacturing Company, Jackson, Miss.:

We have had considerable experience with negro labor, and our opinion as to their stability and efficiency as an industrial factor is that there is no greater drag on the progress of the South than negro labor; instead of improving in efficiency and reliability he is noticeably retrograding. The new generation

takes absolutely no interest in the duties which they are expected to perform, their sole idea apparently being to beat their employer out of all the time possible, and to do their work in the most slipshod manner their superiors will allow, and, in our opinion, the negro labor is absolutely the most costly class of labor which could possibly be employed in the South.

We have an ample supply of workmen in number, we finding it necessary to carry about 200 men on our pay roll to get the labor performed which 100 men should do, and our pay rolls will show that the time put in by the 200 men would not average steady time for over 50 per cent of that number. We hear a good deal about the scarcity of negro labor in many sections, but located as we are, near a large town, we find no difficulty in securing all we want in point of number; but in point of reliability and efficiency the class of labor which we are compelled to employ is sadly lacking.

As to the best method to improve the character of the negro as a workman, we beg to say that, in our judgment, nothing but competition in the field of labor will do this. The negro thoroughly understands that he has practically a monopoly of the southern labor situation, and he is not slow to take advantage of the position which conditions give him. In our judgment, the opening of immigration bureaus throughout Europe to put before desirable immigrants the advantages of the South, and, further, the opening of Government immigration stations at various southern ports will go far toward solving the problem with which the South is now confronted, and with the tide of immigration of the Irish, Swede, German, and other labor of this class turned toward the South the negro will very soon realize the fact that he must either go to work and earn his money or there will be no opportunity for him in this section.

We do not regard the idea of supplanting the negro with Italians in southern manufacturing enterprises with favor. We consider the Italian unfitted for this class of work, although they may be satisfactory in mining and agricultural projects. We need in this section immigrants who will feel when they have located among us that the interests of the citizens in this section are identical with their own, and who will have sufficient ambition to endeavor to make of themselves first-class citizens. We do not believe that the Italians are imbued with this idea, but, like the Chinaman, they are anxious to save up a few dollars to enable them to get back to Italy and live in luxury, comparatively speaking, the rest of their lives. It is not this class of labor, in our judgment, for which the South is looking.

CONFIRMED LABORING CLASS A CURSE.

J. B. Blades, treasurer Blades Lumber Company, Newbern, N. C.:

Our experience with the negro laborer is that he is depreciating very much in quality; that a very small percentage of them are steady workers, which gives great difficulty in running plants, while for the past several years there has been a shortage of labor, making them very independent and even more worthless.

There is a shortage of labor, and we are obliged to take about all that offer themselves, giving no chance to weed out the sorry ones nor discipline those who need it. We can not suggest any method for improving the negro as a laborer when there is a surplus of work and he can apply at any place and get a job.

We are doubtful of the advantage to the South of introducing Italian labor. I, personally, had rather see less manufacturing and a slower growth of the country than having them introduced. What we desire are the people from northern Europe, who can assimilate with our people and become a part of them.

I think it a curse to any country to have a class of people who are to be considered strictly a laboring class. I desire that the laboring class shall be the same as those that are considered the employing class and to be of such material as to be able to become employers of labor.

EVILS OF THE SALOONS.

F. B. Williams Cypress Company (Limited), Patterson, La.:

It is our belief and impression that the negro is retrograding, and very rapidly at that. He is becoming careless and independent, and works just long enough to gather in a sufficient supply of money to lay off three days out of a week and spend the same in riotous living. Our reply to this question is not a surmise, but an absolute fact.

Owing to this difficulty we are extremely short of labor. We can not suggest a remedy for the scarcity of labor, as we have been puzzling our heads

over this for a long time and have not aided ourselves materially. So far as the manufacturing end of the plant is concerned, we have imported negroes from other States, which is an expensive method of operating, but about the only one we have been able to utilize.

We think that the character of the average negro would be improved by taking away from him his numerous secret societies and most of his education, so far as a collegiate course is concerned. We think, however, that the very best way to improve the character of negroes is to eliminate the "white" dive keepers and saloon men. There is only one way to do this. * * * The politicians depend upon the saloon keepers for their support, and the saloon keepers, in return, depend upon the saloon element for their support; hence the present condition of affairs.

On the whole, the Italian labor is superior to the negro so far as farming and agricultural industries are concerned, but for manufacturing business such as ours they can not be trusted. We have had experience with them for the past five years without any material improvement. We have only one way of utilizing them, and that is for lumber stackers, which position needs no intelligence, but some brawn.

MORE PAY, LESS WORK.

J. J. White, of J. J. White Lumber Company, McComb City, Miss. :

The letter you speak of having received from Mr. Porter Warner, secretary and manager Hydraulic Cement Company, Cement, Ga., describes as near as I can portray the exact labor situation in this section.

I am endeavoring to run a sawmill. The principal labor that we use is negroes, and they work about one-third of the time and do not seem to care whether they work at all or not. The better wages we pay them seems to make them worse. The more they get the less the necessity of working. All they seem to think of or require is to get enough to live on, and it matters little, very frequently, how they get this living. I have been working the negro ever since they were freed, and worked them while they were slaves, so I understand the negro pretty well. They have been getting worse every year since they were freed. It is very difficult to run a manufacturing plant of any kind on account of the shiftlessness of labor. In this section of country we have not the white labor to replace the negroes; besides, the white labor in this section of the country is not very good. The white people that labor in this section are rather a shiftless class themselves and not very reliable.

There is a great scarcity of labor, and it is very difficult to suggest a remedy. I do not know any remedy except to import foreign labor, such as Swedes and Norwegians. I would prefer the Swedes to any other class, as they are, as a general thing, good workers.

As the best method of improving the character of the negro as a workman, I have no idea as to how he can be improved. I have been endeavoring to improve them myself for a number of years, but have made a complete failure. I know of no way but to supply labor through immigration.

I do not regard projects for supplementing negroes with Italians in southern manufacturing, mining, and farming very favorably. As a general thing they are fair workers, work regularly, and are very clannish, but I do not believe they can ever be made a good class of citizens; therefore I fear the importation of this class of people to any great extent would fill our country up with a very inferior class of people. We already have a few of them among us, and they have not proven to be a very desirable class. I would much prefer the negro, if the negro could be induced to work regularly and steadily.

The labor question in the South is a knotty one, and I hope something can be done to remedy the present labor condition, but as to what is the best thing to do is very difficult to decide.

PREFERS NORTHERN EUROPEAN SETTLERS.

Samuel Patterson, general manager Big Creek Lumber Company (Limited), Pollock, La. :

We have been operating thirteen years with white labor exclusively. Have had no experience whatever with negro labor. We have about 300 names on our pay rolls, the largest proportion being from the native white population.

We have enough men to keep going steadily, but no surplus. There are always enough idle men circulating around the country to fill vacancies.

Treat the negro fairly and justly, gain his confidence and never abuse it, and otherwise give him the same industrial chance as a white man. The introduction of white immigrants should be gradual. A large number placed at once in a limited area will surely be disappointed and discouraged and very likely get into trouble with the native population.

Scandinavians and Germans are much to be preferred in manufacturing districts to Italians.

ADVANCE OF NEGRO DETRIMENTAL.

W. A. Shipman, vice-president and general manager the D. C. Bacon Company, Brushy, Miss.:

Relative to the labor conditions in this part of the South, we beg to agree with the gentleman of Cement, Ga., except that we can go further and say that an advance of wages to the ordinary negro worker is actually detrimental to the employer and employed. Our experience has convinced us that the less you can pay the ordinary shiftless floating negro the better off he is and the more desirable he becomes as a laborer, as, if he is able to earn enough in two days to live on the other five of each week he does not care very much whether he makes the balance of the week or not. At the same time we prefer him to the class of white labor it would be possible for us to secure in the line of business in which we are engaged. We have several negroes in our employ who are steady and desirable laborers, and who do not shirk or lay off, but these, like angels' visits, are "few and far between."

We give it as our opinion that the stability and efficiency of the negro as a laborer in the lumber industry is rapidly retrograding.

We have an ample number, in fact almost twice as many as would be required to perform the required amount of work if all would work regularly, but we find it necessary to carry a large surplus in order to be able to carry on the work, owing to the inclination which they have to lose time and loaf around.

We have found it bad policy to mix whites and negroes together on an equal plane as laborers; they do not get on well together, and we have had no experience with foreigners.

MUST BE ETERNALLY COAXED AND WATCHED.

A. J. McLaughlin, agent and overseer, Wade & McNair, naval stores, Fairfield, Ala.:

The firm of Wade & McNair, naval stores operators, are now and for many years have been large employers of negro labor. Our experience has been and is in full accord with the statement of Mr. P. Warner. The negro, as a rule, has no object in view as to future conditions. He laughs at any ideal advanced for his betterment. Every opportunity has been offered him for his advancement. Lands, horses, cattle, schools, and plenty of work at good remuneration are at his command, provided he exhibits a disposition to grasp the opportunity. He simply spurns the great advantages that thousands, aye, hundreds of thousands of white men would proudly and heartily avail themselves of did they but know of the boon that awaits them. The negro lives in and for the immediate present. He must be eternally coaxed and watched if good results are to be obtained from his labor. He is always in debt for his "grits," and the greater is his delight as the number of his creditors increases. Our experience is that "dis niggah doan wuk less e hab to," which means, literally:

He is very hungry.

Nothing to gamble with.

No excursions on hand, nor picnics.

No credit.

We admit of a few exceptions. On the whole, however, negro labor in the South is a humbug. Therefore we indorse Mr. Warner's opinion as being eminently correct.

Retrograding as rapidly as the older negroes die out.

There is a scarcity. As a remedy, white labor.

The best method of improving the character of the negro is to let him understand that we do not depend upon his labor. An empty stomach will have the effect of admitting a ray or two of light through his otherwise impenetrable cranium. This can be done by thoroughly advertising and offering inducements, such as a house, say a half-acre of land, or where land is so very cheap, as here, one acre, for gardening.

This will be a big thing for thousands of English, Scotch, Swedes, Germans, Dutch, Danes, Norwegians, or, begorra, a sprinkling from the ould Ireland.

But for God's sake send your Italians to the coal mines of Pennsylvania or some other hot place. We are not in sympathy with the padrone or mafia systems. We love the flag, and would die to protect it. We do not want it cursed with cutthroats and anarchy.

In regard to the other nations enumerated, the offer of a little home will be an immense godsend to those who never had a house and with no prospect of ever getting one in their own native soil.

The incentive will stimulate the capacity and will of the laborer to such an extent that he can be depended upon to do his work when the boss's attention is required in other directions. Yes; the incentive will superinduce a strong sense of gratitude toward the benefactor who will establish such a proposition, and he will be rewarded by the loyalty of the beneficiaries to such an extent that he will be amazed at the increased output and fidelity of his imported employees.

SUPPLANTING NEGROES WITH ITALIANS.

Sam Park, president Industrial Lumber Company, Beaumont, Tex.:

Concerning southern labor supply I take great pleasure in relating my experience, as I consider this is one of the most important questions which we have to deal with in the South. There is no doubt but that the shortage of labor is largely responsible for holding the South back in manufacturing. Our present daily employment at our mills is 775; about 8 per cent are colored, and a large per cent of the remainder are Italians. We are now able to run full time. Seven or eight years ago, when we worked 60 per cent colored labor, we were only able to run about twenty days in the month. We have long since abandoned the idea of operating our plants with colored labor, as they can not be relied on.

ESPECIALLY GOOD IN STRIPES AND UNDER GUARD.

J. P. Stetson, president Stetson Lumber Company, Macon, Ga.:

We have had ample negro labor at our sawmill for the past three years, but until we hired enough convicts to make a regular crew our business suffered from the scarcity of labor. In regard to the stability and efficiency of the negro as a laborer in a sawmill he is the finest workman that we can employ. The warm weather being of long duration, the negro can stand the heat better than any other labor. He will not, as a rule, make full time; three or four days after pay day finds him spending his earnings or gambling them away. My experience is that he is not improving in efficiency and reliability, and, on the whole, I find he is retrograding.

We have at present an ample supply of workmen, and the only remedy we can suggest to people who need this labor, and have not got it, would be to follow our example, namely, hire some good white man who controls anywhere from three to ten of these laborers—that is, they have worked with him so long that they would leave one place and go wherever these white men went. We have two of them at our mill, and they brought about 20 men with them, which, with our convicts, gives us an ample supply.

In question 3 you have asked a question that I see no answer for—that is, as to what is the best method of improving the character of the negro as a workman. I do not think there is any method of improving his character as a workman, and I further think there never will be. As to increasing the supply of white workmen through immigration, I am not familiar enough with the character of such workmen, and must say that the negro labor in sawmills in my section gives the very best results.

Projects for supplementing negroes with Italians in southern manufacturing, mining, and farming are good. It is only a question of time before the negro will be working for day wages, and the farming interest especially can not afford this. I have some friends that have tried the negro labor in a cotton mill, and it was impossible to keep them for several reasons. One of them told me that the hum of the machine very frequently put some of them to sleep.

I am not familiar enough with the mining interest in this section to say anything concerning it. I am dealing with these questions simply as a manufacturer and a worker of negro labor in sawmills. I have had ample opportunity to study him, working both free labor and convicts at a sawmill and on a farm, and I must say that he is the best workman we can employ, and especially so when we have stripes on him and guards enough to make him work and keep him from running away; otherwise the average negro will not stay long at one place, but keeps moving.

DRINKING AND GAMBLING ARE DRAWBACKS.

Perkins & Miller Lumber Company (Limited), Westlake, La.:
 The negro is retrograding because of drinking and gambling.
 We have a fair supply of workmen now.
 Keep whisky from the negro and he does very well.
 We do not like Italians for the sawmill business.

SOME OPINIONS FROM RAILROAD OFFICIALS.

IF ONE HAS PROPER SORT OF WHITE FOREMAN.

N. D. Maher, general manager Norfolk and Western Railway Company, Roanoke, Va.:

Have had more than twenty years' experience with negro labor, and my opinion is that the stability and efficiency of the negro as a laborer in industry is of a high order, provided you have the proper sort of a white foreman in charge of him. I believe he has improved in efficiency and reliability during the last twenty years.

We have not an ample supply of workmen, as the development of this section has outgrown the supply of colored labor, and our company, contractors thereon, and coal operators located on our line are bringing in Italian labor.

I think the best method of improving the character of the negro as a workman is to have him properly handled and pay him fair wages. In this section of the country I think we will have to bring in more or less foreign labor, and I think that Italians and labor from the southern part of Europe are more suitable to our climate.

I do not believe that Italians will supplement negroes in the southern manufacturing, mining, and farming business, but Italians will be needed in addition to all the negro labor they can get.

NO SCARCITY.

M. K. King, vice-president and general manager Norfolk and Southern Railroad Company, Norfolk, Va.:

This company has an adequate supply of negro labor, and finds that variation in quality which will be found among any similar number of laborers of the same general class.

There is no superfluity of labor in tide-water Virginia and eastern North Carolina, but there is not such a scarcity of it as to prevent the establishment and operation of industries.

The introduction of Italians as a permanent supply of labor in the South is as yet entirely experimental.

ADMIRABLE AS UNSKILLED LABORERS.

A prominent railroad man of Louisiana:

I have had experience with negro labor on railroads for many years. Many negroes are admirable as unskilled laborers, being hard working and very willing when they have good foremen; but they are not as good as they were a few years ago, either in reliability or in physical health. Probably half of the colored laborers employed on railroad tracks will work continuously only a few days at a time, and then lay off and wander about from place to place, or when they receive their pay lay off for a few days until they spend it or waste it and are forced again to go to work.

Unskilled workmen are very scarce, and it has been so for the past two or three years. I think the remedy is to increase immigration from Italy and other countries.

I do not think the character of the negro as a race can be improved, believing they are on the down grade. Educating the negro in the three R's and in manual work will no doubt improve the negro as individuals. The matter now being agitated of inducing immigration of white workmen to the South will, I think, help the situation very materially before long.

I am in favor of supplementing negroes with Italians for railroad and farming. I have not sufficient knowledge of manufacturing or of mining to express an opinion upon those two branches.

RELIEVE ITALIANS WILL BE GOOD SUBSTITUTES FOR NEGROES.

A railroad official of Missouri:

The southern labor supply is a subject of the greatest possible importance, and I do not believe that you could start an inquiry in regard to any matter which at this moment is giving greater concern to the industrial interests of the South. To answer your inquiries in detail:

I do not believe that the negro is improving in efficiency as a laborer, and there are positive signs of his retrograding.

There is a great scarcity of labor at present, and it is difficult to suggest a remedy.

I can not suggest any method for improving the character of the negro as a workman. As a rule, he works only so long as the actual necessities of existence require, and an increase in the compensation for his services gives him the power to supply these necessities by decreasing the term of his labor and increasing the term of his idleness. With these characteristics it is, of course, inevitable that he must sooner or later be supplanted with white labor through immigration. This transition will be filled with great difficulties, as it will practically involve a race contest in which the fittest must survive.

I believe that the Italian will be a good substitute for the negro as regards labor for both manufactories and mines, but the South is hardly yet prepared for this class of labor in agricultural pursuits.

MISCELLANEOUS.

FOR LEGISLATIVE CONTROL OF NEGRO.

D. W. R. Read, of Ridgemont Cement Manufacturing Company, Ironville, Bedford County, Va.:

I fully indorse Mr. Warner's views, and believe that any manufacturer in this section who relies on native help, white or colored, will not produce one-third his capacity. Native labor's only ambition is to exist the easiest way it can. The greater the wages and demand the greater the independence and unwillingness to work regularly and efficiently. Contractors only succeed by employing twice the number of men they require and by engaging 50 to 60 per cent weekly to fill vacancies. When any degree of skill is required this course is impossible. These conditions have compelled us to close down our works in an active market at good prices.

Have had over twenty years' experience with negro labor. Formerly it was efficient. To-day the very large majority is worthless, particularly the younger generation. Most of these are venereal and consumptive, and unable to work efficiently if they would. The offspring is degenerate. It is retrograding, and more so among the educated.

There is a great scarcity of workmen. Immigration the solution.

The only hope I see of improving the negro is by legislative control. He is mentally incapable of caring for himself. For protection of himself and the community good habits and discipline should be forced upon him until able to control himself.

Foreigners will serve in protected communities. In isolated sections my experience is the natives will drive them out. They must be introduced quietly, a few at a time.

ITALIANS WERE UNSATISFACTORY.

Dane E. Rianhard, secretary Virginia Portland Cement Company, Fordwick, Va.:

We have used negro labor here for five years, the proportion varying from one-third to one-half of the total labor employed. We have found them more satisfactory on ordinary labor than either the Italian or white labor that we have used. On skilled labor the white labor has been most satisfactory. With the exception of negro men who are married and permanently located here, the negro labor has proved very unstable. They will come and go without apparently any reason. We do not find the negro labor changed either in efficiency or reliability since we started here.

There is a great scarcity of labor here at present, and we can not suggest any remedy, as we are unable to fill our own requirements.

We can not suggest any method either to improve the character of the negro as a workman or to increase the supply of white workmen through immigration.

About one-third of our total labor here was Italian for a year and a half. They did not compare favorably with either the negro or white labor, and when we started the piece-rate work in our quarry they would not work on that basis, and we got rid of all of them. We had already tried Russians and Hungarians, and found them equally unsatisfactory.

HAVE TO KEEP EXCESS ON PAY ROLLS.

Goerge F. Meldrum, assistant secretary and treasurer Union Cement and Lime Company, Louisville, Ky.:

Being on the border line we are not dependent on negro labor, but employ both whites and negroes indiscriminately on certain classes of work, and have had a number of years of experience with both classes. We will answer the four questions to the best of our ability, although the replies may not be as direct as you might desire.

Our manufacturing experience covers a period of over thirty years, during which time, as above stated, we have employed both white and negro labor, and when running full have found it necessary to have about 10 per cent more negroes on our pay roll than the number of positions to be filled, this excess being a necessity in order to have assurance of the full complement of force continuously at work. With us the negro performs only what might be generally termed common labor, and where we employ "poor whites" for the same class of labor it is our experience that the whites are about as irregular in reporting for duty as the negro. The conditions of trade have not warranted our running full for several years, and in laying off operatives we have naturally kept the most efficient as well as most steady, and with our present somewhat limited number of negro employees we have comparatively little trouble on the score of irregularity.

It is such a broad subject that an expression of our opinion could scarcely be abbreviated to a reply of this character, but, in general terms, when the moral character is improved and the negro has some ambition to have and to hold on his own account property, either real or personal, he will then become a more efficient and steady workman as well as a more valuable citizen. As "to increasing supply of white workmen through immigration," we feel this is a very complex problem, as the lower order only of foreigners usually responds to such demands, and we are apt to have in strikes and in anarchistic spirit as annoying, if not more troublesome, evil than found in the irregularity of negro labor.

We are not familiar enough with the details of the "projects" referred to to answer this question intelligently, but on general principles we have serious doubts as to the wisdom of the projects.

We presume that it is your intention, after hearing from the numerous southern manufacturers whom you have addressed on this subject, to editorially or otherwise comment in your columns on the consensus of opinion thus arrived at, and as your letter has awakened a curiosity in our minds as to what the results of your investigation will prove, we should appreciate the favor if you would send us a marked copy of your publication in which you treat of this subject in the event you give it the publicity of your columns.

GENERAL TENDENCY TO "LAY OUT,"

F. M. Masters, agent New River Mineral Company, Ivanhoe, Va.:

I have been working both negro and white labor in this section for twelve years. The negro is being educated in new lines of work, and is efficient and as reliable as any other laborer performing the same class of work, and as he is advanced and more responsible position given him he becomes, as a rule, more reliable. The general tendency of all labor in the South is to "lay out" too much, and in most cases increased wages is no remedy, so far as ordinary labor is concerned. They go to the job that pays the best, but do not work more days.

Labor is scarce in all sections of southwest Virginia, and we are introducing all kinds of machinery that can be used to take the place of men.

Answering your third question, I can only say I have an opinion, but it leads into questions I do not care to discuss in a letter of this kind, as, being theories, they may not prove correct, but I think I see more evidence of being correct every day.

Italians will never prove a success, in my opinion, nor any of the European laborers of same caste. They are undesirable in country districts away from strong police supervision. To "swap" the negro for the class named would be a bad job.

SOMETHING TO BE SAID IN FAVOR OF THE NEGRO.

N. B. Johnston, Greenville, Miss.:

We should be very glad indeed to be able to answer your questions relative to labor conditions in the South in such a way as to assist, to a very limited extent even, in solving the problem which confronts us, but the subject seems so vast and the situation so complex as to preclude the possibility of answering your questions at all categorically, or to do more than to make general observations, but as a beginning will say, in answer to your first question:

The writer has lived all his life—59 years—in the South, and during that time has been more or less in contact with negroes as laborers, and is now the manager of a cotton-seed-oil mill where as many as 75 are at work when in operation, and often their inefficiency and instability is very perplexing, not to say discouraging; but to what extent this applies to the negroes as laborers more than to white men we are unable to say, having never worked white men in that capacity, and while all that is said of the inefficiency and unreliability of the negroes may be true, still we imagine that were many of those who complain most of this confronted with such conditions as to labor as prevailed a few years ago in the Pennsylvania coal regions, and but recently in Chicago, where in both cases white labor is used almost without exception, they would consent that something, at least, was to be said in favor of negro labor, as no such troubles as those above referred to have ever existed where it is used or at any place in the South.

Some one made the statement soon after their emancipation that the negroes were the "wards of the nation," and they are as much so to-day as then, and right here, it seems to the writer, is where the entire question hinges, or rather changes, and becomes not as much an inquiry into the disposition or tendency of the negroes as it is an inquiry into what will the white man do for the negro. For it all depends upon that. The negro will always be a negro—"the Ethiopian can not change his skin"—and there are other differences between the white man and the negro as marked and as unchangeable as the color of the latter's skin, and we verily believe that a majority of the negroes in America if taken back to Africa would, without any restraining influences from white men, revert again to barbarism. The negro has never done anything for himself, and notwithstanding the boasting by members of the race of the wonderful advances made by them when they point to a few exceptional individuals, there would have been no advance except for the assistance of white men. All of which is said to emphasize the statement that what we must ask is not what the negro is capable of or will accomplish, but rather what will the white man help and teach him to accomplish? Governor Aycock, of North Carolina, stated the matter very properly some years ago when advocating education for the negroes. He said that one would not expect to reap any good from the ownership of a pointer dog of the best blood or from the best-formed mule unless he was trained, and it is just this training of the negro by the white man which is needed to secure the best results, and that the negro does not always get such training no well-informed person will question.

The Manufacturers' Record published within the past year or two a very interesting statement from Mississippi, in which there were figures given to show that in those counties of the State in which the whites were in the majority there was a marked increase in the value of agricultural products per acre over what was produced in those counties in which the negroes were in the majority, and this notwithstanding the fact that the assessed value of the lands worked by the whites was lower than that worked by the negroes, which would go to show a very decided advantage in favor of the whites. This no one will deny who has any white blood in his veins, that the white man is the superior of the negro, but this is not the question we are considering, but rather "How are we to solve the negro problem?" In this report from Mississippi, above referred to, we find this statement also, viz, that there was a marked improvement in the production of cotton per acre in certain counties where the negroes composed the large majority of the population over certain other counties with equally large negro majorities, owing to the fact that in the former the farms or plantations were under the control of white owners or managers, whereas in the latter the farming was done by negroes on leased lands where there was little or no supervision by white men, which corroborates our former conclusion as to where the remedy lies, and makes the question more one for the white man than for the negro, or rather places the responsibility more upon the former than upon the latter.

This may not be considered as in any way an answer to your interrogatories, but it is certainly a discussion of the negro problem along the only lines through following which its solution will be accomplished. We call ours a "Christian civilization," and so it is, but its stability and permanence depend entirely upon the extent to which the teachings of the founder of Christianity are adhered to, and one of the first requirements of Christianity is that we give a proper answer to the question, "Am I my brother's keeper?" and act upon it, and also that we be prepared to give a correct answer to the question, "Who was neighbor to him that fell among thieves?" and act upon it. Now, the negro is here to the extent of about 10,000,000 souls, and, as some one has said, "not at all by his own request," and the real question is not what he can or will do for himself, but what will the white man do with him? The highest possible attainment for a white man, or for any kind of a man, is that he accept fully the teachings of Jesus Christ, and the only means which He taught as being proper for one man to exercise in his attempt to control another was kindness; "charity never faileth." Not until the white people of the South have arisen to a full appreciation of this view of the case and of the necessity of putting the Golden Rule into operation will the negro problem be solved.

It can be solved in no other way. Though we will state that as a prerequisite to even this solution—and in this the Manufacturers' Record will agree with us—the people of the North must first consent to the repeal of the fourteenth and fifteenth amendments to the Constitution of the United States, and all others equally uninformed as to the merits of the case must keep "hands off" during the process. Now, with this prelude and somewhat in that light we will endeavor to answer your questions.

Have had a number of years' experience with negroes as laborers in an oil mill, it being the only labor available in the South, so far as the writer knows, and while often very inefficient as compared with what intelligent white labor may be, can not see that they are any more inefficient, as such, now than formerly.

We have had an ample supply of workmen, though last fall had to advance the wages of day laborers owing to a very general advance throughout the country.

The negro will never attain the proficiency in intelligence and consequent efficiency of white men, but when handled with a firm kindness will probably accomplish as much as the corresponding class of almost any race.

The process of supplementing negroes with immigrants from other countries has already commenced and has met with considerable success in some quarters and with some individuals, but it must necessarily be a movement of slow progress, and we hardly look for it to show any appreciable results for a good many years, and it will doubtless bring in its train as uncomfortable accompaniments to our successors as those attending the presence of the negroes.

LONG TRAINING NEEDED.

Brown Brothers, Kentucky Stables, Jackson, Miss.:

In an experience of ten years with negro labor in Jackson we can not see any improvement in them either in efficiency or stability. They frequently knock off or drop out, but we have little trouble in replacing a man, so we experience no scarcity of men, such as they are.

Theoretically, the remedy for the situation is some kind of education or training covering two or three generations. Practically and for present needs some kind of punishment or the fear of it keeps him lined up and in love with you. Finally, a good negro is the best laborer in the world and can't be improved on in the cotton field, but this kind is scarce.

Mr. WOOD. There were objections, were there not?

Mr. PATTEN. There were some objections; yes. However, I should say 95 per cent of our replies were in line with what I have said. We asked questions with regard to the exclusion of persons of poor physique, with regard to the desire for persons in possession of money, and general questions as to the kind of immigrants wanted. Uniformly there was a desire for the exclusion of such persons as would

be excluded by Senator Dillingham's bill, and of illiterates and for foreign inspection.

Mr. WOOD. As I understand it, these replies were mostly from manufacturers, employers of labor.

Mr. PATTEN. Some of them were from employers. Replies were received also from State officials, from mayors, secretaries of commercial clubs, and from various representative citizens. We had replies from farmers also. The kind of immigrant most desired, with the exception of the cities of Birmingham, New Orleans, and one or two other districts of that kind, was the small family with some money that would go out into the rural districts. There was a distinct opposition to the class that would huddle in the cities and was averse to country life.

Mr. WOOD. What was the character of the replies that you received from the North?

Mr. PATTEN. They were not so many. We have not recently made a special canvass of the North itself to amount to anything. We consider its attitude a closed question.

Mr. BONYNGE. Why closed?

Mr. PATTEN. Because I feel from correspondence with various persons and organizations, such as commercial bodies, associated charities, and from a study of newspaper clippings, that with the exception of certain districts, which are peculiarly interested in the present immigration, there is a desire throughout the North for immediate additional legislation. I don't think there is any question about that.

Mr. BONYNGE. Have you requested the views of the large manufacturers in the manufacturing centers of the North?

Mr. PATTEN. Take a State like Vermont or New Hampshire—

Mr. BONYNGE. Those are not large manufacturing States.

Mr. PATTEN. No; but throughout those States I think there is a distinct desire for legislation, but it is not as strong as it is in the South and Southwest, where it is almost intense. I think that in New York City and in Boston there is less demand for further legislation than in any other places in the United States.

Mr. BONYNGE. Was it the aim of your league to get the views of all sections of the country or only the views of those in sympathy with the objects of the league?

Mr. PATTEN. Perhaps I can answer that question by explaining how we came to canvass the South. In June there was an immigration conference called to meet at Birmingham, Ala. That conference was promoted by certain interests—the large employers of labor especially at Birmingham, certain railways, and certain other interests. After the movement was started we got in touch with some of the men that attended it, and as a result of that correspondence we decided to try to combat the comprehensive effort that was being made to commit the South to indiscriminate immigration, and especially against any further immigration regulation or legislation. To ascertain the real attitude of the South we made an extensive canvass of its wishes and got in touch with all the other meetings held in the South, and there have been a number of them—there was the southern conferences on quarantine and immigration—

Mr. BONYNGE. So that, as a matter of fact, your efforts were directed more to ascertain the sentiments of the South than any other portion of the country.

Mr. PATTEN. Yes, sir; because there was a comprehensive plan, a well-developed scheme, to arouse interest against any additional legislation and to misrepresent and misinterpret the attitude of the South, so as to head off the rising demand in the North for restriction.

Mr. WOOD. You say you gave no special attention to the Northern States?

Mr. PATTEN. Nothing more than correspondence resulting from requests for the league's documents. With our documents we inclose a list of questions, which are frequently answered. The news clippings—we subscribe for the newspaper clippings, and I was basing my opinion more upon my familiarity with clippings and correspondence with various persons, commercial bodies, charities, and other organizations—

Mr. GARDNER. You don't mean to say, as I understand, that this Restriction League has been in existence a great many years?

Mr. PATTEN. Since 1894.

Mr. GARDNER. But it is only within the last two years that you have been giving special attention to the South?

Mr. PATTEN. During the last two years.

Mr. GARDNER. Your work has been generally all over the country, previous to that?

Mr. PATTEN. Yes, sir.

Mr. BURNETT. Has it not been a comparatively new question, so far as the South is concerned?

Mr. PATTEN. Yes, sir. Heretofore the South has received practically no immigrants. Its population has grown out of its own loins as fast as that of the North with its addition or rather substitution of alien immigration. The 36 States south of the Potomac and west of the Mississippi received last year less than 8 per cent of the over 1,000,000 immigrants that entered the country; in 1904, 10 per cent.

Mr. BONYNGE. So that 92 per cent, practically, within the last two years went to the Northern States?

Mr. PATTEN. Went east of the Mississippi and north of Mason and Dixon's line.

Mr. BONYNGE. And to that part of the country you did not direct your especial questions to ascertain the effect of immigration there, but you did direct them to the other portions of the country.

Mr. PATTEN. Yes, sir. Because the Northeast had enough and there was the proposal to divert the influx to the South and neutralize the northern demand for restriction by a southern demand for immigration.

Mr. HAYES. As I understand it, prior to two years ago you had canvassed the North.

Mr. PATTEN. We felt, so far as the North was concerned, that the general attitude of that section was in favor of further regulation and restriction, that the demand for labor there was a demand for cheap labor, and—

Mr. BURNETT. What did you find prior to that time the sentiment of the North to be, especially in the rural districts among the farmers, about any restrictions or an increase in immigration?

Mr. PATTEN. I have not made any canvass, and I do not think the league has made any within the last few years. I have been connected with the league only since May 10, and I do not know that they have ever made any canvass of the rural districts of the North. The opinion which I expressed was based entirely upon the impression which I have received from talking with officials of the league, from reading their records, and from looking over the news clippings, and so forth.

Mr. BURNETT. What did you find, from your canvass of the West, the prevailing sentiment to be?

Mr. PATTEN. There is a desire for immigration in certain parts of the West. Take, for instance, Colorado. I believe they plan to hold some sort of an immigration meeting in Denver for promoting desirable immigration.

Mr. BONYNGE. I haven't heard of it.

Mr. PATTEN. Some time in January—no, I believe it has been postponed until some time in April. With regard to the West, I know this, however, that certain railroads are making a great effort to settle up vacant lands along their lines in western Kansas and western Nebraska. They are starting now to organize commercial clubs for the purpose of promoting immigration into the sections which were abandoned in the nineties. The kind of immigrants desired—the first preference—is for native-born Americans. The same is true of the South, where there is also a deep-rooted hostility to the distribution of people from the worst quarters of the cities and the incoming of certain classes from western Asia and southeast Europe. The second preference is for people from northwestern Europe. We asked with regard to the different classes desired, their preference for certain nationalities, and so forth. The replies that we received from Oklahoma, for instance, stated, as a rule, that no more immigration was needed. That is not true of western Kansas. It is not true of Colorado and the Southern States and Territories.

Mr. HAYES. I suppose Mr. Burnett referred to the Middle West—the Mississippi Valley.

Mr. PATTEN. Kentucky, Tennessee, and all those States desire immigration—desirable immigration. They always qualify it, and they are opposed to the illiterate and degraded classes.

Mr. BONYNGE. Generally throughout the West that is so?

Mr. PATTEN. Yes, sir; they always qualify it.

Mr. BURNETT. Throughout the South and everywhere else I think that is so.

Mr. HAYES. I think there is no difference of opinion about that.

Mr. BURNETT. In your correspondence with the people of the South did you find this situation that I have heard of—a situation which I have heard of among the farmers who know the negro well—that the negro recognizes the superiority of the Anglo-Saxon race or the northwest of Europe people, but he would not recognize the superiority of the "Dagoes," as they call them, or the south of Italy people? Whenever there is a contact between them there is liability of racial trouble springing up from that. Did you hear of such suggestions?

Mr. PATTEN. Yes; we received a number of those. They cited South America and what happened there in regard to those races.

I would also like to say that what I said with regard to the desire expressed by correspondents to drive the negro north so that the North would understand and appreciate the negro problem, was contained in only one or two letters. The gist of the correspondence with regard to the negro was that the negro was with them, he understood them and they him, and they did not want to see him driven to the wall.

Most southerners regard the negro as a good laborer, and do not want to see him brought into ruinous competition with certain classes of cheap labor now settling in the mining districts and huddling in the sweat shops of our big cities where they receive very low wages. For instance, in Alabama there was a suggestion that something additional ought to be done to educate white labor in industry, in manual training, and so forth. They thought that would help to solve the problem of the scarcity of labor there.

Mr. BURNETT. We have schools of technology at Atlanta and in other places in Alabama where that is being done.

Mr. WOOD. Is the league which you represent opposed simply to the undesirable immigration or in favor of general restriction of immigration?

Mr. PATTEN. I think the league would be in favor—of course I am simply saying what my personal opinion is—in favor of some limitation upon the present large influx, because it believes the assimilating powers of our cities, which have to do all the digesting and assimilating of the present large influx of community-living, city-loving aliens, to be overtaxed. Our former immigration from north-west Europe went out into the rural districts where needed.

Mr. GARDNER. The league is in favor of the educational test?

Mr. PATTEN. Yes, sir; ever since it was proposed in 1897.

Mr. WOOD. Are you secretary of the league?

Mr. PATTEN. I am the assistant secretary. Prescott F. Hall is the secretary.

Mr. WOOD. Of course you are familiar with the general purposes of the league.

Mr. PATTEN. Fairly, sir. I know this, that they are not opposed to all immigration per se. They are not really opposed to the immigrant—to the alien—if he will make a good citizen and will assimilate with our standards of living, institutions, and ideals. That is, of course, in case he comes in digestible quantities. One million is a large number of the present class of immigration for us to gulp down and try to assimilate in one year.

Mr. BURNETT. For instance, you take the English, the Irish, the Scotch, and the German; they are partly assimilated already, especially the English. As a class they are good people, and there is little objection to their coming, because of their digestibility, as you call it. Is not that your observation from your investigation?

Mr. PATTEN. That is true.

Mr. BURNETT. Perhaps less objection as to those people than any other class that comes.

Mr. PATTEN. They are kith and kin to us in everything. Perhaps I ought to qualify that by saying that the strong tendency and characteristic of those classes is to assimilate readily.

Mr. GARDNER. Have you ever talked with Commissioner Billings in regard to some of those people from the British Isles?

Mr. PATTEN. No, sir.

Mr. BURNETT. What is your idea in regard to that—that those people do not assimilate—Mr. Gardner?

Mr. GARDNER. That they are a poor class of immigrants.

Mr. BURNETT. Those coming from the British Isles—the factory people, the cotton-factory people?

Mr. GARDNER. Yes; that would be my own observation.

Mr. BONYNGE. What part of England do they come from?

Mr. GARDNER. From Lancashire, generally.

Mr. BURNETT. Are they illiterate?

Mr. GARDNER. I don't think that they are. But I have several times stood at the gates and watched the women come out—they come out largely by nationalities from one of those large cotton mills—and I don't think you would pick out a very good class of immigrants.

Mr. BURNETT. Are they not about as good as the Americans engaged in that same business?

Mr. GARDNER. I don't think we have any Americans engaged in the cotton mills. Once in a while a man might be a fisherman in the summer and work in the cotton mill in the winter. Practically speaking, the help in our cotton mills is not the Yankee; it is the French Canadian, English, and others.

Mr. HAYES. Irish?

Mr. GARDNER. Comparatively few Irish, but some Syrian, and to some extent Armenian.

Mr. BONYNGE. If you shut off the immigration, who will do the work in the cotton factory?

Mr. GARDNER. I don't know.

Mr. PATTEN. I would like to say in regard to the desire of the farming community, that it is fairly well expressed in the resolutions of the Farmers' National Congress. I will send those here also, if the committee wishes them. I just happened to be in the city and had no idea of being invited to appear before the committee until the chairman spoke to me at the opening of this meeting.

Resolutions adopted by the Farmers' National Congress at Richmond, Va., September 14, 1905:

Whereas much of the greatness of the United States is due to the energetic, industrious, and patriotic immigration which came to this country during the past century; and

Whereas a strict execution of the present laws makes it possible to keep out the worst of the pauper and diseased elements of European and Asiatic immigration, but whereas these laws admit large numbers of immigrants who are undesirable because unintelligent, of low vitality, and of poor physique, tending to become a burden upon our large cities and not available for supplying the need for laborers; and

Whereas the coming of these undesirable aliens tends not only to lower the standards of American citizenship, but also to prevent the coming of immigrants who would be valuable workers in the country districts and who would readily assimilate with our population: Therefore, be it

Resolved, That we urge upon Congress the importance of further judicious regulation of immigration, and in particular demand the enactment of a law raising the present head tax upon immigrants and excluding absolutely immigrants of poor physique and those unable to read in some language.

Mr. WOOD. Is that the National Grange?

Mr. PATTEN. No; the National Farmers' Congress.

Mr. WOOD. Would it not be well to have those resolutions incorporated?

Mr. BURNETT. I think so. Where was it held?

Mr. PATTEN. Richmond, Va. They resolved in favor of excluding the imbeciles, persons of poor physique, illiterates, and in favor of raising the head tax.

Mr. BONYNGE. When was that?

Mr. PATTEN. That was held from the 12th to the 16th of September, 1905.

Mr. BELL. What State did that represent?

Mr. PATTON. All of the States. It was a national affair. About 40 States sent delegations. Mr. Nathan Bijur attended the meeting and addressed it on the subject of immigration.

Mr. BONYNGE. What did the Birmingham convention resolve?

Mr. PATTON. They were practically the same. I will send those if you care to have them incorporated.

Mr. WOOD. I suggest they be incorporated.

Resolutions adopted by the Alabama Immigration Conference, held at Birmingham, Ala., June 13, 1905:

Resolved, That we express to the Representatives in the Federal Congress from this State our earnest desire that they support any reasonable measure looking to the elevation of the standard of foreign immigration, to the end that criminals, paupers, and illiterates be excluded.

Resolved further, That we cordially favor the encouragement to this State of all desirable immigrants who will aid in its moral and material development.

Mr. GARDNER. The Chattanooga convention never got as far as that question.

Mr. PATTEN. I attended the Chattanooga conference. There was a special effort made to get control of the Chattanooga conference, and that control was secured. Friday, the 10th, was set aside for discussing the question of immigration. Commissioner Sargent was invited to address the meeting, Hon. E. J. Watson was invited, and a number of others. On Friday morning a gentleman appeared and said that the citizens of Chattanooga had prepared a trip to Chickamauga battlefield, where luncheon would be served and the speeches on immigration would be heard. That was the end of the immigration programme. I understood from parties in a position to know that that was a deliberate plan.

Mr. BONYNGE. Did the New York conference, which was recently held, pass resolutions?

Mr. PATTEN. Passed ten resolutions, and I will be pleased to send those if the committee desires them.

Resolutions adopted December 8, 1905, by the national immigration conference, held at New York City December 6, 7, and 8.

(This conference was composed of delegates appointed by the governors of the several States, Territories, and the District of Columbia, and by various commercial, educational, and charitable organizations.)

A. REGARDING WHITE IMMIGRATION.

(1) *Resolved*, That the members of the national conference on immigration heartily indorse the wise suggestions of the President of the United States in his annual message to the Congress regarding the enforcement and amendment of the laws concerning immigration and regarding an international conference

to deal with the question. They urge upon the Congress the speedy passage of the laws required to put these recommendations into effect.

(II) *Resolved*, That the immigration laws should be amended in the following particulars:

(a) By placing in the excluded classes "feeble-minded persons," "imbeciles."

(b) By carefully defining the term "persons likely to become public charges" so as to permit the exclusion of those persons of permanently enfeebled vitality, whether this condition is due to accident, inheritance, disease, advanced age, or other defect.

(c) By making provision so that the air space allotted to each person in ships carrying immigrants be not less than 200 cubic feet, instead of 110 cubic feet for the main deck, as now provided, and that the space be proportionately increased for the other decks.

(d) By making such provisions as shall compel the service of food at tables with seats in compartments not used for sleeping.

(III) *Resolved*, That the penalty of \$100 now imposed on the steamship companies for bringing diseased persons to the United States be also imposed for bringing in any person excluded by law.

(IV) *Resolved*, That the Government of the United States provide some methods of investigation, examination, and certification of foreign immigrants in their home countries, or at the port of departure, so as more certainly to avoid the hardship of deportation by preventing the embarkation of persons excluded by law from admission into the United States.

(V) *Resolved*, That, in order to prevent the undue concentration of immigrants in some parts of our country and to encourage their better distribution in sections where conditions may be more favorable, the United States Government afford to the separate States and Territories opportunities to furnish to incoming immigrants at the ports of entry and also, so far as it may be found practicable, before their arrival in this country, trustworthy information regarding the material resources and the conditions of life and labor which confront the followers of different occupations in the various States and Territories.

(VI) *Resolved*, That we recommend to the Congress that it furnish sufficient means to the Commissioner-General of Immigration to improve the facilities for handling immigration at the South Atlantic and Gulf ports, in order thereby to promote the better distribution of immigration over the undeveloped lands of the South and Southwest.

(VII) *Resolved*, That on account of the large number of alien immigrants who are admitted contrary to law because of the possession of naturalization papers fraudulently obtained, this conference recommends that all naturalization certificates should contain a description of the applicants similar to that provided in the case of passports issued by the Department of State.

(VIII) *Resolved*, That we recommend to the Congress the establishment of a Commission, with competent authority, to be appointed by the President, to investigate the subject of immigration in all its relations, including the violations and evasions of the present law; and to report to the President the results of its investigations with recommendations.

(IX) *Resolved*, That we heartily commend the National Civic Federation upon its initiative in calling together this first national conference on the important subject of immigration, and in order that this work may be advantageously continued, we request the Civic Federation to appoint a standing committee on that subject.

B. REGARDING CHINESE IMMIGRATION.

Resolved, That we heartily indorse the position taken by the President that the Chinese-exclusion laws, forbidding the admission of laborers, ought to be maintained and rigidly and honestly enforced.

Resolved, That a rigid examination of all incoming passengers from the Orient be made at the port of departure, as recommended for incomers at the Atlantic ports, so as to eliminate entirely, if possible, the hardships of detention and deportation.

Resolved, That we request Congress to provide better facilities for inspection and examination at the Pacific Coast ports similar to those provided at Atlantic ports.

Resolved, That our laws and treaties should be so framed and administered as carefully to except Chinese students, business and professional men of all

kinds—not only merchants, but bankers, doctors, manufacturers, professors, and travelers—from the action and enforcement of the exclusion laws.

Mr. WOOD. What was the purport of those resolutions?

Mr. PATTEN. The New York papers did not publish any of the proceedings to speak of, nor the speeches delivered there. One or two of the papers did refer to the meeting as being a lot of restrictionists. That conference grew out of the meeting held on the 19th of June of the board of trades and transportation, which was addressed by Mr. Emil Boas, of the Hamburg Line, Nathan Bijur, and other men interested in immigration or affiliated with men interested in it.

Mr. GARDNER. I was a delegate to that conference, and I would just like to show for the benefit of the committee how that conference was arranged. They had a committee on resolutions appointed from each State—

Mr. BONYNGE. Pardon me, but how many States were represented?

Mr. GARDNER. I think practically all.

Mr. PATTEN. Thirty-seven were represented.

Mr. GARDNER. Yes. There was a committee on resolutions appointed from each State and 25 at large, if I recollect the number correctly, and they were appointed by the Chair. One of the first rules that was brought in was to the effect that all resolutions on being introduced should be at once referred to the committee on resolutions, and that no resolution should be reported back to the conference for action unless it passed practically unanimously. I suggested from the floor that that would make it impossible to pass any resolution with any sort of a backbone in it, and one official suggested to me that this conference was more for instruction than for a quarrel, and so instead of moving to amend that a majority should report the resolution I moved from the floor to amend it so that two-thirds should pass it. They passed a set of harmless resolutions that would not hurt a flea. I have them upstairs if anybody wants to see them.

Mr. BONYNGE. How many delegates were there?

Mr. PATTEN. There were about 350.

Mr. GARDNER. They were unanimous on everything excepting the Chinese.

Mr. HAYES. I was a delegate to that conference, but was advised that it was gotten up for the purpose of knocking the idea of restriction of immigration, and I did not go.

Mr. PATTEN. That was our idea, and the result of it. We followed that conference with much interest, knowing the interests which promoted it originally.

Mr. WOOD. The results were colorless?

Mr. GARDNER. I considered them so, but you know my point of view might not agree with some other people. I do not think the officials of any steamship company would stay awake nights after they read those resolutions.

Mr. TAYLOR, of Ohio. May I ask Mr. Gardner a question?

The CHAIRMAN. Yes, sir.

Mr. TAYLOR, of Ohio. Mr. Gardner, are you aware of the fact that all of those proceedings at the conference were prearranged to fit before the conference was stirred up?

Mr. GARDNER. I never knew a conference that was not.

Mr. PATTEN. With regard to foreign inspection, I beg to call the committee's attention to a letter which I wrote to Congressman Underwood, which he has referred to the committee:

IMMIGRATION RESTRICTION LEAGUE,

Boston, Mass., February 16, 1906.

HON. OSCAR W. UNDERWOOD,

Washington, D. C.

MY DEAR CONGRESSMAN: There are one or two immigration facts which I beg to call to your attention.

In further explanation of H. R. 12319, let me say that we have been in correspondence with several Government officials with regard to the possibility of getting foreign inspection of immigrants abroad, and they say that a number of foreign governments have communicated their unwillingness to allow any examination of immigrants in their territory. Last year, as you know, 11,879 poor unfortunates made the trip across the ocean only to be denied entrance, most of whom might have been turned back on the other side if the steamship companies had been compelled to sift them out.

Senator Dillingham seems to think that the steamship companies live up to our laws. Doubtless this is true of a few of them, but the fact that 1,560 aliens having dangerously contagious diseases were brought to this country last year in flat violation of sections 2 and 9 of the act of 1903, and that the steamship companies paid fines last year amounting to \$27,400, is conclusive to the contrary. So is the fact which the Commissioner-General cites on page 41 of his report for 1904.

It seems certain that 11,879 is not all of the 1,000,000 immigrants that should have been barred under section 2 last year. Leaving the sifting out until the immigrants arrive on this side makes it possible for many of the immigrants who ought to be excluded to gain entrance by appeals to Washington and other hooks and crooks as set forth in the Commissioner-General's report for 1905 on pages 74 and 75.

Of the 1,026,499 aliens who entered the United States last year only 175,624 had ever been in the United States before. Thus there was a net alien addition to our population of at least 850,875. Only a little over 8 per cent of the over 1,000,000 went to the 36 States and Territories south of the Potomac and west of the Mississippi rivers.

The last report of the Massachusetts State Board of Charities shows that since 1900 there have been 1,723 cases of foreign paupers in Massachusetts, for whom the Commonwealth has been reimbursed \$19,613. Magistrate Wahle, president of the city board of magistrates, says, in his report for 1905, that there was an increase in New York City of 18,388 arraignments over 1904. With regard to the nationality of the prisoners, he says that there is "an appreciable decrease in the number of persons who are natives of the United States, 2,151 fewer American-born defendants for 1905 than 1904, a proportionate reduction in the number of persons held or convicted who were born in Ireland, Germany, and France," and that there is an "increase of 1,455 in the number of persons held or convicted born in Italy, 2,463 in the number of those born in Russia," and "an increase of 608 of the number born in Greece." He says that in 1905 there was an increase in the number arrested for felony over 1904 of 2,450. I wonder if you have seen the newspaper reports of the two stirring anticrime public meetings held recently in Chicago and of the formation of an anticrime league in that city? The reports say that the increase in crime in Chicago, as in New York City, is due to the presence of criminally disposed southeast Europeans. I inclose an interesting letter written by Hon. Andrew D. White, which has been published in Mr. Flynt's book entitled "Tramping with Tramps."

The 1905 report of the New York State lunacy commission shows an increase in insanity of 20 per cent, which Doctor Spitzka says is due to the fact "that New York is unfortunately the port of entry for the bulk of our present immigration." There were last year 26,861 commitments, practically all from New York City. The State asylums of New York are full, and the State is having to build three or four new ones. Ninety per cent of the applicants for poor relief last year in New York City were foreigners.

I also inclose a few figures taken from an issue of the Tradesman, which I think will be of interest to you.

Very sincerely, yours,

J. H. PATTEN,
Assistant Secretary.

The CHAIRMAN. Gentlemen, we have the Commissioner of Immigration here, Mr. Sargent, and there may be some questions that you would like to ask the Commissioner.

Mr. SARGENT. I came here to be a listener, gentlemen.

Mr. BURNETT. Mr. Sargent, there was a matter suggested by Mr. Gardner, by some questions the other day, in regard to the probable violation of the contract law—not by your officials, but that, as a matter of fact, the men who came over went to work the next day, and from all appearances they went to work under a contract, express or implied. I would like to know what your idea is in regard to that.

Mr. SARGENT. Well, we have a case in point to-day. There arrived in Boston on the last ship a large number of men coming to a designated place. Some weeks ago we were advised by the American Federation of Labor that a manufacturer of woolen goods in Maine was about to import labor from Europe. We notified our officers to be on the watch, and yesterday we were advised by Commissioner Billings that these men had arrived. They were all going to this one place.

But there was no evidence that could be exacted from them that would indicate that they were under contract. The suspicions were aroused first by the report made by the American Federation of Labor as to the men going to this particular place, and their arrival in large numbers all destined to one man at that place. We immediately sent an officer there from Boston to make an investigation and to see if there could be any evidence obtained which would connect it up. We had a large number of Hungarians arrive last week at the port of New York, something like 30, all going to one street address in Indianapolis. There was no evidence taken before the board of inquiry that would indicate that they were coming under contract, and they denied having any agreement; but they were all going to one address in Indianapolis.

Mr. BURNETT. Was that the address of some manufacturer?

Mr. SARGENT. Of course an officer has been sent to Indianapolis to make an investigation and see if there can be anything connected up. There is no question in the minds of our officers that when these laborers come here in numbers of 30, 50, or 75, sometimes all going to one little town or to one man, are coming here under an arrangement made before they started; but to get any evidence upon which the Government can bring an action is a very difficult matter.

Mr. BURNETT. It is almost impossible to ferret it out.

Mr. SARGENT. Yes, sir.

Mr. BENNET. I would like to ask Mr. Sargent how the Government obtained any information on the Tile Makers Employers' Association—I don't think I have the correct title—but I understand it was effective in four instances in New York recently?

Mr. SARGENT. The Tile Makers' Association had a strike—a lock-out—and they imported labor from Europe to break the strike. After they had succeeded in breaking the strike, they then began to dismiss the men whom they had brought over here for the purpose of breaking the strike; and the men reported to the Government how they were brought over here, and by virtue of their evidence the case was brought up and \$4,000 was paid in fines on those four men. When it came to the question of indicting the tile company, the Gov-

ernment did the same thing—that is, not having a sufficient amount of evidence, the case was dropped on the payment of the fines.

Mr. BONYNGE. How many were imported?

Mr. SARGENT. Only four upon which the action was brought.

Mr. BONYNGE. Was that a civil action?

Mr. SARGENT. That was the action under the provision of the law imposing a fine of \$1,000 per man. It is claimed that there was one word left out of the law that ought to have been in there, and on that account they could not criminally prosecute them.

Mr. BONYNGE. What was the word?

Mr. SARGENT. The word "misdemeanor."

Mr. BONYNGE. In what sections was that? We ought to amend that.

Mr. SARGENT. I believe it has been inserted in the same bill——

Mr. BURNETT. The Penrose bill?

Mr. SARGENT. Yes, sir.

Mr. WOOD. What was the number of immigrants you spoke of a few moments ago destined to Indianapolis?

Mr. SARGENT. About 50 of them; Hungarian miners.

Mr. BENNET. If we gave you more money so that you could get more men to assist you in the service, don't you think that you could do something toward breaking up these cases that unquestionably exist—that is, bringing in contract labor in violation of law?

Mr. SARGENT. I do not. It is not money and not men. What we want is law; we want the law to enforce.

Mr. BONYNGE. What additional law do you want in regard to contract labor in addition to the insertion of the word that was left out, which you mentioned a moment ago?

Mr. SARGENT. That is one of the important features.

Mr. BONYNGE. Is there anything else besides that that you want to introduce in order to make the contract-labor law stronger?

Mr. SARGENT. Put the contract-labor law in the immigration act which is now pending. We have no contract-labor law; it was eliminated from the last act in 1903. The claim has been made that if we went into court we would lose on the ground that the alien contract-labor law was not in existence. That view is now held by a good many attorneys who are quite well informed on the national statutes.

There is a question as to whether we have to-day an alien contract-labor law. For that reason it has been introduced in the bill that has been prepared and referred to as the bill of Senator Dillingham. We have been up against several cases of that kind. We had 30 miners brought over to Philadelphia for the Ellsworth Mining Company, of Pittsburg. There was no question about their coming under contract; it was absolutely clear, because there was the written agreement that was made with the men. We stopped them at Philadelphia—the second lot—and deported them. An action was brought by the Department of Justice against the company, and afterwards dismissed on the ground that the evidence would not warrant prosecution on account of the weakness of the position of the Government in not having this particular law embodied in the immigration statute.

Mr. GARDNER. I am correct in saying that there has been no decision of any court to that effect.

Mr. SARGENT. We have not been able to get it up there.

Mr. GARDNER. Did you not have the same difficulty before the passage of the law of 1903 in enforcing the contract-labor law?

Mr. SARGENT. I could not answer that, because I had not taken hold.

Mr. GARDNER. Has it not always been so?

Mr. SARGENT. I have always understood that it has been almost impossible to enforce, by proceedings against any corporation, any punishment for violation of the contract-labor laws.

Mr. GARDNER. Leaving that out, and taking the contract labor as it comes in, isn't it absolutely and practically impossible, we will say, to get proper evidence that they come in in dribblets instead of bunches of 50, well schooled to answer every question? Is it not practically impossible to detect the contract labor?

Mr. SARGENT. Not always.

Mr. GARDNER. I don't say always, but as a general thing.

Mr. SARGENT. Of course, these people are instructed on the other side just what answers to make.

Mr. GARDNER. That is my point.

Mr. SARGENT. It is a very hard matter to get them to convict themselves.

Mr. GARDNER. That is my point exactly.

Mr. SARGENT. Although a great many do.

Mr. GARDNER. You send back how many—a thousand in a year?

Mr. SARGENT. About 1,000. There have been a great many cases where the Department felt that it had sufficient evidence to convict the corporation for the violation of the law; a great many of those cases, not one but many, where the evidence in the line of the Department was absolutely conclusive that the corporation had violated the law, but to get a conviction is another thing.

Mr. GARDNER. I am not taking it up from the punishment point of view; that is not what interests me so much as keeping them out. There must be a vast number of men who come in in dribblets that are really under an implied contract, because when you see them at the other end, as I do, when they have arrived, everybody knows that they have come with some arrangement with the boarding-house keeper, we will say. If the Victoria mills, say, are going to start up again, and if there are a large number of people arriving in town who recently came over, everybody knows that they are going to work in the Victoria mills. I don't know how the contract is made. They come in dribblets, some to one address and some to another; and I don't see how you can possibly detect them.

Mr. BENNET. Supposing you had the men and the money, could you not send the men abroad, not as agents of the United States Government, but as detectives, or anything you might call them, to mingle with the people from whom these contract laborers come, and have the proposals made to them?

Mr. GARDNER. You are a lawyer, and I am not; but I should say that that sounds like a rather impracticable way.

Mr. BENNET. There was a man by the name of McPartland who went out to Idaho, according to newspaper report, and got into the inside of a gigantic conspiracy out there, and had eight, ten, or twelve men arrested on the work of that one man. If the State of Idaho can go to work and unearth a thing like that, it seems to me that the United

States Government, with all the money and power that they have, could break up a practice which involves only ignorant foreigners.

MR. GARDNER. The law has been in force for a great many years, and I don't think any man who is willing to say what he really thinks believes for a moment that it has been effective.

I call your attention to Mr. Sargent's evidence, on page 69:

MR. GARDNER. Now, as a matter of fact, do you not think that a very large proportion of the labor that comes to this country comes under an implied contract?

MR. SARGENT. I do not think there is any question about that, Mr. Gardner.

MR. SARGENT. That opinion hasn't anything to do with the enforcement of the immigration laws. I could not arrive at any other conclusion.

MR. BENNET. That is not the point. The point is that it has not been effective in the past. If we put the men and the money into it, can not we make it effective in the future? That is the point.

MR. BONYNGE. Do I understand it to be the view of the Immigration Commission and of your Bureau, that we should adopt legislation which would seek to restrict the number of immigrants regardless of their character; in other words, restrictive instead of selective legislation?

MR. SARGENT. The bill which has been submitted by the Department only provides for the restriction of the undesirable classes from a physical standpoint and from an age standpoint; for instance, imbeciles, weak-minded, those who are certified by the medical officer as of such poor physique as will not permit them to earn a living, and an age limit of boys coming to this country, under 17 years of age, without their parents.

MR. BONYNGE. So that the views of the Department are in favor of attempting further selection among immigrants rather than restriction?

MR. SARGENT. Yes, sir; that is in the bill that was sent up by the Department.

MR. BONYNGE. The Department bill does not include illiteracy?

MR. SARGENT. No, sir.

MR. WOOD. Are the views of the Department represented by this bill of Senator Dillingham's?

MR. SARGENT. They are; yes, sir.

MR. WOOD. That is the Department measure?

MR. SARGENT. I would not want to say that. The Secretary sent up a draft of the Department view to Senator Dillingham, and they were embodied in a bill.

MR. WOOD. They were incorporated in the bill he introduced.

MR. BURNETT. I have not read the bill. Does it also incorporate the idea of the immigrant having some money when they get here?

MR. SARGENT. I think that has been eliminated. Some of the views submitted by the Department are not embodied in the bill.

MR. GARDNER. May I ask at this point to have included in Commissioner Sargent's evidence his answer to my question relative to the 10,000 people at Ellis Island whom I said were examined straight?

MR. WOOD. What are the other salient points of this bill which you say broadly represent the views of the Department?

MR. SARGENT. Those provisions that I have stated; for instance—

Mr. WOOD. In regard to selection.

Mr. SARGENT. Selection; yes, sir; and providing for excluding the imbeciles, the weak-minded. We have a large number of that class coming in all the time, and it is intended by that bill that they shall be the excluded classes, excluded from entering the country.

Mr. BURNETT. Without regard to the age of the imbecile?

Mr. SARGENT. Yes, sir.

Mr. BENNET. Does Mr. Hayes's bill cover the views of the Department as well or better than Senator Dillingham's bill?

Mr. SARGENT. I can not answer regarding Mr. Hayes's bill for the Department; I can only answer for the Bureau of Immigration. We are very much pleased with Mr. Hayes's bill, because it goes further than the Dillingham bill.

Mr. GARDNER. Including the \$20 head tax?

Mr. SARGENT. Under certain conditions; yes, sir.

Mr. BONYNGE. Does your bill include the educational test?

Mr. SARGENT. If the bill that was introduced containing the provision for the establishment of a bureau of information for the purpose of furnishing immigrants who come to this country information in regard to the localities where they can best settle, where they can go, having in mind something as to the distribution of immigration, should become a law, then the money that would be raised by the additional head tax would be very beneficial, very helpful.

Mr. BURNETT. I interrogated you a little the other day in regard to an effort to weed out these people on the other side before they come over. Don't you think it would be practicable, if we were to pass a law that no one who did not have a certificate from some of your inspectors on the other side should be landed, that they would find some way to prevent the inspector being there at those ports every time?

Mr. SARGENT. I don't think there is any question but that the Government could by some means make provision for the establishment at every port of embarkation of officers of the United States immigration service to pass upon the certificates of aliens embarking into the United States.

Mr. BURNETT. Would not the practical effect of that be to stop many of them at the threshold at that time.

Mr. SARGENT. It would have the effect of stopping many of them at most of the interior places; they would not leave to start for the point of embarkation.

Mr. BURNETT. Would not start from home?

Mr. SARGENT. Yes, sir.

Mr. HAYES. Is it sufficient to give you that authority?

Mr. SARGENT. We have that authority now, to detail officers abroad.

Mr. HAYES. Do you wish any additional legislation in that regard?

Mr. SARGENT. I think it is a matter which ought to come up either through a treaty arrangement or by an arrangement through the State Department with foreign countries.

Mr. HAYES. Would you want us to incorporate in any bill we might pass some direction to the State Department to take the question up with foreign countries; or how would we get at it?

Mr. BONYNGE. There are several bills pending before the international conference on that subject.

Mr. SARGENT. The necessary thing would be to have some understanding with the different governments. The matter was taken up by correspondence of placing medical officers at foreign points of

embarkation to make a medical inspection for contagious diseases. Several of the governments expressed their willingness that it should be done. We now have at the port of Naples an officer of the United States Marine-Hospital Service who passes upon all aliens coming from that port to the United States as to their physical condition and as to contagious diseases. If you will take the medical report of the Surgeon-General, you will see each month how many he rejects for favus and how many he rejects for trachoma. Those people are prevented from coming. There is no question but what it would be an advantage.

There is one thing that has always occurred to me, Mr. Chairman, if a man is afflicted with a loathsome, dangerous, and contagious disease, which the United States Government prohibits from entering the country, we should put a fine upon the steamship company for bringing him here, and they should return him. There is far more danger from the spread of a contagion by virtue of a man being mixed up with the passengers who are loaded together for eight or ten days than there would be if you turned him loose in the country here. There are very few steamships that come to this country that do not bring over one or more cases of contagious diseases, such as trachoma. When such a passenger spends five, six, or eight days with other passengers in the steerage, using the same towels, washing at the same bowl, it is very dangerous, and the steamship company should be fined a hundred dollars for every man they bring here and be made to take him back. It has always seemed to me that that alone was sufficient argument to warrant the placing of a medical officer at the port of embarkation to prevent the steamship companies bringing diseased people in with the people who are going to be landed when they get here.

Mr. BONYNGE. That is right.

Mr. BENNET. Just one question. I read in one of the New York papers the other day that two steamship companies—I don't know which ones they were—were fined \$5,000 apiece for using a berth by some adjustable arrangement for a dining table. I would like to have some details of that.

Mr. SARGENT. I saw that in the paper. That comes under the Navigation Bureau.

It might be of interest to the committee to know that the first American citizen has just been denied landing in England and deported back to the United States under the new alien law of Great Britain. He was found without sufficient money. [Laughter.]

On motion, the committee adjourned at 11.40 a. m.

The correspondence from Commissioner-General F. P. Sargent, of the Bureau of Immigration, Department of Commerce and Labor, regarding the stripping of immigrants at Ellis Island, which, by motion, was voted to be made a part of the report of the proceedings of the committee, follows:

DEPARTMENT OF COMMERCE AND LABOR,
BUREAU OF IMMIGRATION,
Washington, March 5, 1906.

Hon. BENJAMIN F. HOWELL, M. C.,

*Chairman Committee on Immigration and Naturalization,
House of Representatives.*

SIR: I beg to acknowledge the receipt of your letter of the 3d instant, in which you request information concerning the statement made at the last meet-

ing of the committee with regard to the stripping of aliens at the Ellis Island immigration station.

Immediately upon my return from the hearing I wrote former Commissioner Williams for a statement in the premises, and also called upon the chief medical officer at Ellis Island for a report. I now have the honor to inclose for the information of the committee copies of the replies received from the two gentlemen mentioned.

I desire to reiterate the statement which I made before the committee that if time permitted a physical examination of arriving aliens could be conducted which would result in the discovery of the existence of diseases which would class the aliens as ineligible for admission—especially mental disabilities and venereal diseases—in a much larger number of cases than is possible under present conditions, the large number of arrivals and the comparatively limited space and force of employees in which and with which to handle them making the present medical examination far from exhaustive.

I also invite special attention to the statement of Ex-Commissioner Williams to the effect that the stripping was confined to unmarried male aliens, principally from Mediterranean ports, the object of such stripping being the discovery of syphilis and other venereal diseases; also to the statement of Doctor Stoner to the effect that the total number of aliens so stripped upon the special occasion was much less than 10,000, and that the daily average could not have exceeded 500 during that period.

Respectfully,

F. P. SARGENT,
Commissioner-General.

LAW OFFICES OF WILLIAM WILLIAMS,
35 WALL STREET.

New York, February 21, 1906.

HON. F. P. SARGENT,
Commissioner-General of Immigration,
Washington, D. C.

DEAR SIR: My best recollection of the incident referred to in your No. 49656, of the 20th instant, is as follows: I received information from responsible sources that immigrants from southern portions of Europe were introducing into this country certain loathsome and dangerous contagious diseases, including syphilis and other venereal diseases, because the existence of such diseases was not revealed by the ordinary medical examination, and the charge was made that the Government was not doing its full duty in excluding them. Since the truth of this charge was quite within the possibilities, the surgeons were directed by me to take such steps as were necessary to ascertain the actual facts beyond any question, with the result that all unmarried male immigrants arriving upon several vessels coming from Mediterranean ports were stripped and subjected to a thorough medical examination. It was soon determined that the charge was unfounded.

In view of the inadequate facilities, the great pressure upon the medical division, and the very small percentage of additional cases thus detected, it was thereafter left to the surgeons to determine whether or not an immigrant should be stripped for medical examination. Such stripping always has occurred and necessarily will occur in a considerable number of cases.

It appears to have been stated to you that the result of these special examinations showed "that the percentage of the undesirables, from a physical point of view, was no greater than when the ordinary methods of inspection were used." The sole point determined was that the law excluding persons with loathsome and dangerous contagious diseases was being correctly enforced. Since there was no statute excluding the physically unfit upon that ground alone, the surgeons were not directed to make any investigations in relation to general physical conditions beyond those which they were in the habit of making.

Very truly, yours,

WILLIAM WILLIAMS.

AUGUST 15, 1903.
SURGEON-GENERAL, PUBLIC HEALTH AND MARINE-HOSPITAL SERVICE,
Washington, D. C.

SIR: I have the honor to submit herewith, for such advice as the Bureau may be pleased to extend, a letter addressed to me by the commissioner of immigra-

tion at this station under date of the 12th instant, requesting an opinion as to the necessity of stripping all aliens of their clothing to enable us to determine whether they are suffering from any disease (including particularly diseases mentioned in the statute), or whether they are physically unsound in any particular which is likely to render them public charges. In case this is not necessary in all cases, an opinion is requested as to whether it is necessary as to any great percentage; and if so, approximately what percentage.

In connection with the foregoing I may say that, during my recent absence on special duty, the medical officer in temporary charge was requested by the commissioner to strip and examine all unmarried male aliens arriving at this station, with the view to determine by such examination whether syphilis or any form of venereal disease does not exist to any considerable extent amongst arriving immigrants.

An examination was then made of the arrivals, covering a number of different vessels, at intervals during a period of a week or more, and, so far as I could learn upon my return to this station last week, the only cases found were one of gonorrhea and one of suppurative inguinal glands, as reported by Surgeon Peckham in his letter to the Bureau of July 29, 1903, and one case since that date of ulcer of penis.

I therefore directed that the wholesale stripping method be discontinued and the usual form of examination be resumed as per book of instructions, by which always a certain proportion of the arriving aliens are examined in sufficient detail to determine the existence of any marked form of disease, to wit: "Cases turned aside for special examination, as well as any others to whom the attention of the examiner has been brought, should be subjected to a sufficiently thorough physical examination to determine whether there are other defects besides those which primarily attracted attention. The examiner should detain any alien or aliens as long as may be necessary to insure a correct diagnosis."

I then informed the commissioner that, in my opinion, the stripping method has been given a sufficient trial to prove the correctness of the observations previously made at this station, as shown by the medical reports, that syphilis is one of the rarest diseases amongst immigrants. For example, of the 3,427 arriving aliens admitted to the immigrant hospital at Ellis Island during the year ending June 30, 1903, only two were found to be suffering with syphilis.

The commissioner has no desire whatever to urge the matter, but now that it has been under consideration requests an expression of an official opinion.

Respectfully,

GEO. W. STONER,

Surgeon, Public Health and Marine-Hospital Service.

TREASURY DEPARTMENT.

BUREAU OF PUBLIC HEALTH AND MARINE-HOSPITAL SERVICE,

Washington, September 5, 1903.

SURG. GEORGE W. STONER,

Public Health and Marine-Hospital Service,

Medical Division, United States Immigration Service,

Ellis Island, New York.

SIR: Referring to your letter of August 15, 1903, inclosing a communication from William Williams, commissioner of immigration at the port of New York, requesting an opinion as to the necessity of stripping all aliens of their clothing in order to determine whether they are suffering from any disease, including particularly diseases mentioned in the statute, or whether they are physically unsound in any particular which is likely to render them public charges, you are informed that a meeting of the Service board was called to consider this question, and it decided that your action in discontinuing further stripping of male immigrants was a proper one, as the information before the board convinced them that the number of cases of venereal disease discovered in aliens entering the port of New York, under this system of stripping them, was too small to justify such a procedure; besides, there were other reasons which rendered it objectionable.

Respectfully,

WALTER WYMAN,

Surgeon-General.

PUBLIC HEALTH AND MARINE-HOSPITAL SERVICE,
OFFICE OF THE MEDICAL OFFICER IN COMMAND,
Ellis Island, N. Y., February 26, 1906.

The COMMISSIONER OF IMMIGRATION,
Ellis Island, New York Harbor.

SIR: I have the honor to acknowledge receipt of Bureau letter, dated February 24, 1906, referred to me by your indorsement of the 26th instant relative to a statement which has recently been made that, during the administration of Commissioner Williams at Ellis Island, a large number of aliens were divested of their clothing for the purpose of conducting a thorough medical examination, and that the number of such cases has been reported as having aggregated 10,000 in one day, and while this latter statement is probably incorrect the Bureau would appreciate advice from me as to the extent to which this practice has been followed in the past, and whether it has been conducive of any results which would not have been obtained had the ordinary procedure been followed.

In reply I beg to say that in the daily routine of medical examination work on the line it is necessary to turn aside a considerable number of aliens for further examination; some of these are partially divested of their clothing, but only to a sufficient extent to enable the medical examiners to determine diagnosis for certificate, or whether or not the alien shall be admitted to hospital for further observation.

The aliens referred to in the said Bureau letter, however, were turned aside, not because they presented any symptoms suspicious of any particular disease, but to determine whether or not any considerable number of male immigrants were suffering from diseases which, in the ordinary routine of examination on the line might have been overlooked.

The test was applied during the latter part of July and the first week in August, 1903, and with the result as set forth in a communication I addressed to the Surgeon-General under date of August 15, 1903. The total number thus completely divested of their clothing was considerably less than 10,000; the average number probably did not exceed 500 a day.

A copy of the communication above mentioned, and a copy of the Surgeon-General's reply, dated September 5, 1903, are herewith inclosed.

Respectfully,

(Signed) GEO. W. STONER,
Surgeon Public Health and Marine-Hospital Service.

H. R. Fuller, legislative representative of the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen, Order of Railway Conductors, and Brotherhood of Railroad Trainmen, submitted the following communication to present the views of these organizations with reference to the restriction of immigration:

WASHINGTON, D. C., March 12, 1906.

Hon. B. F. HOWELL,
Chairman House Committee on Immigration and Naturalization,
Washington, D. C.

DEAR SIR: As the representative of the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen, Order of Railway Conductors, and Brotherhood of Railroad Trainmen, representing in all 230,000 railroad employees, I respectfully ask your honorable committee for the favorable consideration of some legislation which will materially restrict foreign immigration, including persons who can not read or write.

Our first and main reason for desiring an educational test is because it seems to be the most effective plan which has yet been proposed for the restriction of that objectionable class of immigrants who enter our labor market in competition with our own workmen, and who, by their manner of living and lack of higher ambitions and interest in our country, are undesirable competitors with the American workman. These immigrants work for lower wages than do the American workmen, it being their practice to accept employment without ever inquiring about the amount of wages they are to receive for it or the number of hours they will be required to work, and this has a tendency to drag the American workmen down to their level.

Many of them come here with no other desire than to accumulate all the wealth they can for the purpose of returning with it to their native country, and to accomplish this they live in holes and hovels and subsist on what an American could not

long endure. The American workman has a family to support, and children to educate in accordance with American standards and customs. The foreigner has not, and in this way our workman is competing under a disadvantage, and we believe it is wrong to compel the American workman whose wages contribute so much to the good of our country, both materially and morally, to compete with the foreigner who absorbs all and gives but little in return. The American workman has high ambitions. He loves his country and his American home. He is a taxpayer. He is a part of, aye, and the principal part of our Government. Why, then, is he not entitled to this protection at the hands of his Government? Every engineman, fireman, conductor, and brakeman who seeks employment in this country today is required to pass not only an educational test, but a physical examination as well. Why, then, should not the alien who comes here to compete with him be required to stand at least a perfunctory educational test?

While, as I have said, we favor a restriction of immigration by an educational test, because it seems to be the most restrictive means yet proposed, we also think it will incidentally benefit our country. Education, and education alone, will civilize the world, and it is through education only that the great army of wage workers can ever hope to achieve industrial success. Why, then, not encourage it? We are spending millions yearly to educate our own people, and why should we allow this noble work to be counteracted by permitting our shores to become the dumping ground for the ignorant of other countries? Self-preservation is the first law of nature, and no good reason has yet been presented why the United States should not exercise that right.

The subject of restricting immigration is not a new one. It has been before the country for many years, and it has been indorsed by practically all of the labor organizations of the country, and the two great political parties have at various times touched upon it in their platforms. While the Democratic platform of 1896 did not say as to what means should be adopted, it said this on the general subject:

"We hold that the most efficient way of protecting American labor is to prevent the importation of foreign pauper labor to compete with it in the home market."

The Republican party was, however, in that year more explicit as to the means to be employed, and in its platform said:

"For the protection of the equality of our American citizenship and the wages of our workmen against that fatal competition of low-priced labor, we demand that the immigration laws be thoroughly enforced and so extended as to exclude from entrance to the United States those who can neither read nor write."

In 1900 the Republican party again said:

"In the further interest of American workmen we favor a more effective restriction on the immigration of cheap labor from foreign lands."

For the information of the committee I herewith submit a copy of a resolution passed by the Brotherhood of Railroad Trainmen at its seventh biennial convention held at Buffalo, New York, May, 1905:

"Whereas the Republican party platforms of 1896 and 1900 contained planks favoring the further restriction of immigration; and

"Whereas, the representatives of that party have been in complete control of the Congress of the United States for the past ten years, and have failed to carry out these pledges: Therefore be it

"Resolved by the Brotherhood of Railroad Trainmen in seventh biennial convention assembled, at Buffalo, N. Y., this 24th day of May, 1905, That we criticise the representatives of the Republican party in Congress for their failure to make good their pledges with regard to legislation for a further restriction of immigration."

Respectfully submitted.

H. R. FULLER, *Legislative Representative.*

James F. Grimes, representative of the American Federation of Labor, submitted the following communication:

WASHINGTON, D. C., March 10, 1906.

HON. BENJAMIN J. HOWELL,
House of Representatives, Washington, D. C.

DEAR SIR: The last general convention of the American Federation of Labor, held in Pittsburg, Pa., November 13-25, 1905, adopted resolutions dealing with the question of immigration.

If you will kindly read the resolutions, which I herewith attach, and have the features embodied in proposed immigration legislation or incorporated in any pending legislation in the form of amendments, you will favor the American Federation

of Labor, which represents through the medium of its annual conventions about 2,000,000 wage-earners of the country.

One of the greatest difficulties met with in attempting to apply the immigration laws properly and completely is the smuggling of prohibited aliens across the extensive borders of Mexico and across the more extensive borders of the Dominion of Canada.

The contention of the Federation is that the ports of entry for European and Asiatic immigrants should be confined to the Gulf of Mexico and the Atlantic and Pacific oceans, requiring all such immigrants to have certificates of entry from such ports only, and thus prevent, if possible, the evasion of our laws via the smuggling routes.

Trusting you will render your valuable services to the end that the provisions of these resolutions may become embodied in legislation, I remain,

JAS. F. GRIMES,

Legislative Committee American Federation of Labor.

[From proceedings of National Convention of American Federation of Labor, held in Pittsburg, Pa., November 13-25, 1905, page 238.]

A further check should be put upon assisted immigration. The law now permits the passage of an alien to be paid by any relative or "friend" living in this country. Every employer who wants to bring in cheap laborers is of course a "friend" to them, or can find somebody to play the part. It is one of the readiest means of evading the contract-labor law. The privilege of paying the passage of others should be restricted to the nearest relatives—fathers, mothers, and children, brothers and sisters, husbands and wives.

In accordance with the views here outlined, we recommend that you authorize your officers to use all honorable means for the amendment of our immigration laws so as to exclude persons physically unfit, to check the evil of assisted immigration, to introduce an educational test, and to provide that ports of entry shall be confined to those on the Atlantic and Pacific oceans and the Gulf of Mexico.

Treasurer LENNON. I wish to amend the report of the committee by providing that no one shall be excluded who leaves his own country because of political offenses. Carried.

A letter from Robert W. Hill, superintendent of the state and alien poor of New York, which was submitted, follows:

ALBANY, N. Y., March 7, 1906.

HON. BENJAMIN F. HOWELL,

Chairman Committee on Immigration,

House of Representatives, Washington, D. C.

DEAR SIR: I beg to send you herewith a copy of the report of the committee on state and alien poor of the State board of charities. A certain part of this report deals with the question of immigration and makes recommendations which, in the judgment of the State board of charities, should be incorporated in the present law. The department of state and alien poor, of which I am superintendent, has to do with all aliens committed to public charitable institutions in the State of New York. We find large numbers of these persons added to the population of our institutions from year to year, and their presence imposes a heavy financial burden upon the State. For example: Yesterday I visited the Elmira Reformatory, and found that about 60 per cent of the total population is composed of aliens, with a constant population approximating 1,500. This shows the large number of undesirable aliens in one institution who must be maintained at the expense of the State of New York. In one class there were 32 young men. Of these, 22 had been in the United States less than one year; 9, between thirteen months and three and one-half years, and 1 has been here eight and one-half years.

The entire class was composed of aliens, and an examination of their faces and the stigmata of degeneracy which marked nearly every man in the class indicated that 90 per cent of these persons should have been excluded upon arrival in the United States as "likely to become public charges." It seems to the committee on State and alien poor of the State board of charities that the term "likely to become public charges" should be defined to some extent so as to include within its scope persons who from age, physical or mental disability or defect, persons displaying marked moral indifference or perverseness, may be designated as coming under the excluded group.

The present law of excluded persons does not cover the undesirable immigrants as fully as it should. For example: Idiots are to be excluded, but the term "idiot" is an uncertain one. If it were amplified, so that it should read "idiots, imbeciles, and persons of feeble mind," a great many who should be excluded, but who now are permitted to enter, would find it difficult to land. One serious trouble which the department of state and alien poor meets in its efforts to remove aliens to their homes in other countries lies in the roundabout methods of the Bureau of Immigration at Washington. These methods are antiquated, cause delay, unnecessary letter writing, and frequently result in the escape of aliens who are of the excluded class.

There is no reason why a verification of the landing of an alien, made by the commissioner of immigration at New York and certified by him over his signature to this department, should not be accepted by the commissioner of immigration at Montreal. There is no good reason why the same form of certificate used by the commissioner at the port of New York should not be used by the commissioners at other ports. Within the last few weeks the certificates, copied exactly from the printed form furnished by the commissioner of immigration, have been rejected as insufficient in form by the acting commissioner at Montreal. As a consequence of the delay and the protracted correspondence, aliens have escaped with marked frequency. If the law could confer upon the commissioner at New York the right to determine from the facts presented whether an alien should be deported or not, without referring the papers to Washington, it would cut some of the red tape and expedite removals.

Another important amendment would be the extension of the time during which the Bureau of Immigration could deport persons becoming public charges from causes existing prior to their landing. At present these persons can be removed within one year only, unless they give consent, when they may be removed in two years, or by special permission of the Commissioner of Commerce and Labor, within three years. It seems to this department that such persons should be removed at any time up to five years after arrival, a period required to qualify for citizenship. It would be wise also, in the judgment of the State board of charities, to extend the power of removal of aliens in institutions who give their consent to be returned, so that the period for the consenting class would be ten years. Thus "involuntary" removal could be made at any time within five years and "voluntary" removal within ten years. This would enable the Bureau of Immigration to remove a great many aliens who are now permanently domiciled in charitable institutions.

Trusting that some beneficial legislation may be the outcome of your winter's labor, I remain,

Respectfully,

ROBERT W. HILL,
Superintendent State and Alien Poor.

EMBASSY OF THE UNITED STATES OF AMERICA,
Berlin, April 19, 1905.

DEAR MR. FLYNT: As you know, I consider the problems furnished by crime in the United States as of the most pressing importance. We are allowing a great and powerful criminal class to be developed, and while crime is held carefully in check in most European countries and in them is steadily decreasing, with us it is more and more flourishing. It increases from year to year and in various ways asserts its power in society.

So well is this coming to be known by criminal classes of Europe that it is perfectly well understood here that they look upon the United States as a "happy hunting ground," and more and more seek it, to the detriment of our country and all that we hold most dear in it.

Yours, faithfully,

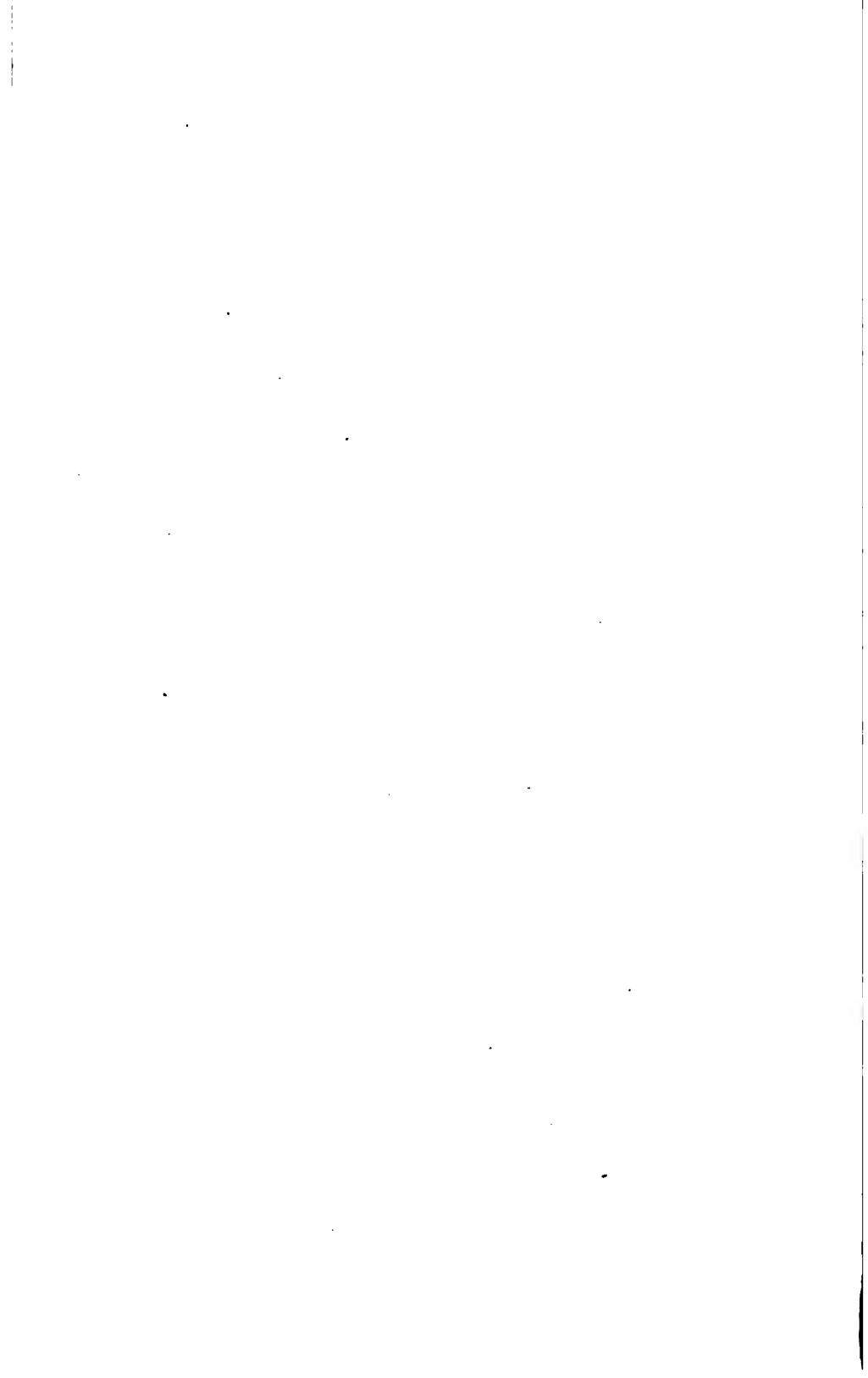
ANDREW D. WHITE.

MR. JOSIAH FLYNT.

(Published in Mr. Flynt's book, *Tramping with Tramps.*)











CLEMENT N. VANN AND WILLIAM P. ADAIR.

APRIL 5, 1906.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BURKE, of South Dakota, from the Committee on Indian Affairs, submitted the following

REPORT.

[To accompany H. J. Res. 133.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 15898) for the relief of Clement N. Vann and William P. Adair, report in lieu thereof a joint resolution, and recommend its passage.

The joint resolution is as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That jurisdiction is hereby conferred upon the Court of Claims to hear and determine the claim for services rendered by Clement N. Vann and William P. Adair, late of the Indian Territory, to the Osage Nation of Indians, in defeating a treaty between the said nation and the United States, executed in eighteen hundred and sixty-eight, commonly known as the "Drum Creek treaty," and certain proposed legislation injurious to the Osage Indians for the sale of their lands in Kansas, and in procuring the enactment of other legislation favorable to said Indians for the sale of said lands.

That a petition may be filed by the executor or administrator of the estates of said Adair and Vann, respectively, in said court, within forty days from the approval of this act, against the Osage Nation of Indians, and service of said petition shall be had by delivering a copy thereof to the Secretary of the Interior and to the governor or principal chief of said nation, with a notice to answer within the time herein prescribed, and said answer shall be filed in said court within ninety days after the service of the petition.

The court may receive and consider all papers, depositions, records, and documents heretofore filed either in said court or the Executive Departments of the Government, together with any other evidence offered by either party to the case, and shall render a judgment or decree against the Osage Nation of Indians for such amount, if any, as the court shall find legally or equitably due for the services of said Adair and Vann, either upon contract or upon a quantum meruit, provided said court shall determine that a plea of quantum meruit may be interposed and considered, not exceeding one hundred and eighty thousand dollars. The court shall enter judgment for the total amount found to be due, if any, and shall specify therein the

amounts payable to any person or persons under any contract or assignment made since September twenty-sixth, nineteen hundred and two, covering any portion of said claim. The amount necessary to pay said judgment is hereby appropriated, out of the funds in the Treasury of the United States to the credit of said Osage Nation.

Said cause shall be advanced on the calendar of said court. The amount for which judgment may be rendered by the Court of Claims, when paid to the parties named in said judgment, shall be received in full and final settlement of the claim for said services of said Adair and Vann against said nation of Indians: *Provided*, That said Osage tribe be, and are hereby, authorized to employ counsel, with the consent of the Secretary of the Interior, to represent them in said cause.

The claim of Vann and Adair is for services alleged to have been performed between the years 1868 and 1873, in aiding in defeating the ratification of a treaty which had been made with the said Osage Nation, said treaty having been executed in 1868, and commonly known as the "Drum Creek treaty," for the sale of certain lands. Had this treaty been ratified, the Indians would only have received about \$1,500,000. Subsequently legislation was secured by a provision in an Indian appropriation bill, and it is claimed that it was largely through the efforts of Vann and Adair, and the Indians received \$10,000,000 from the sale of the same lands included in the "Drum Creek treaty."

The said Vann and Adair had a contract with the said Osage Indians by which they were to receive for their services 50 per cent of whatever the Indians might receive over and above the amount that they would have received under the "Drum Creek treaty" of 1868. Some time in 1873 they surrendered this contract to the Indians and made a settlement by which they were to receive \$330,000 in full for their services, and later this amount was reduced to \$230,000, and a contract was entered into and ratified by a council with said Indians to pay said Vann and Adair the said sum of \$230,000.

In 1874 this contract was submitted by Vann and Adair to the Secretary of the Interior for approval, and the same was approved for \$50,000, which amount was paid to the said Vann and Adair. There is testimony that they received this amount under protest, and that they did not receive it in full payment of their claim, and there is also evidence that they continued in an endeavor to secure the balance claimed to be due them, namely, \$180,000, and had certain negotiations with the Indians relative thereto, and it is alleged, and there is testimony to the effect that the Indians requested, in 1874, the Secretary of the Interior to pay the balance of \$180,000, and in 1877 there was a petition signed by the governor of the tribe and the business committee, to President Hayes, asking that the amount be paid.

In 1880 the governor and business committee drew a warrant on the Secretary of the Interior for \$180,000 in favor of Vann and Adair, and in 1893 the National Council of the Osage Indians passed a resolution requesting that the amount stated be paid to the heirs of Vann and Adair.

It appears that the claim has been presented at different times to the Interior Department, and Mr. Secretary Teller, in 1883, referred it to the Assistant Attorney-General for the Interior Department and he made a complete report both as to the facts and law and summed up the case in eight conclusions, which received the Secretary's approval, as follows:

First. The agreement made in writing between the nation of Osages and Adair & Vann November 10, 1869, was a valid agreement, free from fraud, and entered into for the mutual advantage of both parties.

Second. Adair & Vann rendered arduous, faithful, and valuable services under such agreement, and fully "complied with" and "fulfilled" the same on their part.

Third. The agreement of February 8, 1873, confirmed June 26, 1873, was a valid instrument and settlement for such services, and free from fraud and extortion, and was fully understood and intelligently assented to by the Osages.

Fourth. The payment of \$50,000 on said agreement was not received and accepted by Adair & Vann in full satisfaction of said claim.

Fifth. The question of a further payment upon said agreement has been formally opened by this Department and the Executive for consideration and adjustment.

Sixth. The sum of \$50,000 already paid is not an adequate compensation for the services rendered.

Seventh. Aside from the question of the effect which the approval of said contract for \$50,000 may have to preclude this Department from further action, the contract of 1869 and the settlement of 1873 both provide for the payment of the fee due Adair & Vann out of the proceeds of the sales of Osage lands in Kansas. These proceeds having been covered into the Treasury, no further payment can be made by the Executive until authorized by legislation.

Eighth. It is respectfully submitted that Congress should authorize such further payment as in equity and justice shall be deemed to be right.

Respectfully submitted.

JOS. K. McCAMMON,
Assistant Attorney-General.

HON. HENRY M. TELLER,
Secretary of the Interior.

FEBRUARY 26, 1883.

I have examined the within and believe it to be correct. I approve the same.

H. M. TELLER, *Secretary.*

The case was later referred by Secretary Teller to the Court of Claims, under the Bowman Act, for the finding and advice of the court. The attorneys entered into a stipulation that the case be submitted and all requests for findings of fact be waived, except the finding that the claim having been decided by a prior Secretary of the Interior that a subsequent Secretary had no power to take action in the case. The stipulation of the attorneys, as aforesaid, was as follows:

* * * this case be submitted to the court without argument, all requests for findings of fact being waived, except the finding that the claim has been decided by a prior Secretary of the Interior, and that the present Secretary has no power to take action in the case. * * *

That was the only question submitted to the court by the counsel in that case, and it was not argued. The court reached this conclusion:

DECEMBER 12, 1887.

Upon the foregoing facts, and in view of the opinion of the court in the case of the State of Illinois v. The United States (20 C. Cls. R., p. 342), the court is of opinion that the Secretary of the Interior has not authority to reopen the claim of Vann and Adair.

The claim has been presented on several occasions to committees of Congress, and while this committee have some doubts as to the legal rights of the claimants to recover, they believe that the matter should be considered by some tribunal that can go into the case fully, and ascertain all the facts and finally adjudicate it, and therefore the committee adopted the resolution above set forth, conferring jurisdiction upon the Court of Claims to hear and determine the matter.

By order of the committee the hearings are hereto appended.

COMMITTEE ON INDIAN AFFAIRS,
HOUSE OF REPRESENTATIVES,
Wednesday, March 29, 1906.

The subcommittee having in charge bill H. R. 15898, "for the relief of Clement N. Vann and William P. Adair," met at 10.30 o'clock a. m., Hon. Charles H. Burke in the chair.

STATEMENT OF HON. JOHN J. HEMPHILL.

Mr. HEMPHILL. Mr. Chairman and gentlemen of the committee, Mr. Neil and myself represent the decedents of William P. Adair and C. N. Vann, two Cherokee attorneys of good character and good ability, as I have heard from various sources, for services rendered to the Osage nation of Indians in defeating a treaty known as the Drum Creek treaty. This treaty was made in 1868. That treaty provided that the Osage lands in Kansas, amounting to about 8,000,000 acres, should be transferred to a railroad company for the consideration of \$100,000 cash and \$1,500,000 in railroad bonds, the value of the latter being uncertain.

Soon after that the Osage Indians, realizing that they had made a grave mistake, sent for Messrs. Vann and Adair, who were down in the Cherokee country, and asked them to take the matter up in Washington and devote attention to it for the purpose of securing for them proper consideration and a proper price for their lands. Those gentlemen undertook that work, and when they reached Washington they found that the treaty had been made under instructions from the Commissioner of Indian Affairs, and had been approved by him and by the Secretary of the Interior, and had been forwarded to the Senate by President Grant for confirmation. While it was pending in the Senate of the United States five other railroads managed to get themselves into the treaty by amendment, so that when Vann and Adair undertook their work they found that they were confronted by six railroad companies who wanted to take the lands of these Indians and get out of them what they could.

The railroads undertook to do this by appealing to the Senators to favor the treaty. These attorneys found, unfortunately, that the railroads were stronger than the Osages or their attorneys. These gentlemen then directed their attention toward the Executive Departments. They found no sympathy in the Interior Department or in the Indian Office; and finally they went to President Grant and asked him to withdraw the treaty. He declined to do this unless they could establish the fact that fraud had been committed in negotiating the treaty. They then undertook to establish that fact, and did establish it to the satisfaction of President Grant, who finally withdrew the treaty.

As soon as that treaty was withdrawn the railroad companies commenced a new line of operations. Senator Ross, then a Senator from the State of Kansas, introduced a bill, the terms of which I need not read to you, but the effect of which was practically to carry out the treaty. Mr. Ross proposed his measure as an amendment to the Indian appropriation bill. Then Mr. Sidney Clark, who represented one of the Kansas districts, and who was chairman of the Committee on Indian Affairs of the House, introduced a bill to provide that the lands should be sold to settlers at \$1.25 per acre and that \$1,000,000 of the proceeds should be placed to the credit of the Osages and the remaining \$9,000,000 be placed to the credit of the United States, which took all of the lands of the Osages, amounting to 8,000,000 acres, for \$1,000,000.

Then Senator Harlan introduced a bill in the Senate providing that they should receive \$2,000,000 for their lands, and the balance to go to the credit of the United States. Mr. Hogue, the Indian superintendent or agent, recommended that they should receive \$2,500,000 as their share of the proceeds of these lands after Messrs. Vann and Adair had defeated the other two propositions. They had to contend with these several measures, coming through the various stages of legislative action and executive action, and finally defeated the whole matter, and subsequently secured the adoption of an amendment to the bill, in 1870, which provided that these lands should be sold at \$1.25 per acre to the settlers, and the money placed in the Treasury of the United States to the credit of the Osage Nation. That was the ultimate result, and they sold the 8,000,000 acres for \$1.25 per acre, and the proceeds have gone into the United States Treasury. One million dollars of this has been used by the Osages for the purchase of their land in the Indian Territory, which is now occupied and has become very valuable on account of the oil and for other reasons.

So far as the services of these gentlemen are concerned, I want to say that when the Osages engaged Vann and Adair they made a contract with them that they should

receive as their fee one-half of whatever they saved to the Osages. That contract was made in 1869, but the attorneys had commenced work before any written contract was made.

After their services were completed it was learned that the contract would entitle them to about \$4,200,000, that being one-half of the amount saved under the treaty by which the railroad companies would have gotten the lands. That was so much larger than anybody could have anticipated that some method of adjustment was proposed, and in 1873 this original contract was returned to the Osages and a new contract in writing entered into between Vann and Adair and the governor and head men of the nation.

This contract of Vann and Adair provided that they were to be paid \$330,000. That was in February, 1873. In June, 1873, there was a meeting of the council of the Osage Nation of Indians, and they sent for Vann and Adair. They came to this meeting, and, after consideration by the council for a week, that contract was ratified by the council, but a provision was inserted that it should be reduced from \$330,000 to \$230,000. That was done, and thereupon a resolution was passed by the council, on June 26, 1873, providing that the indebtedness under the original contract obligation of the Osage Indians and Vann and Adair should be settled in full by the payment of \$230,000.

That was agreed to, and the matter was presented to the Interior Department here, and they were paid \$50,000 upon that contract. The question was raised as to whether it constituted a full payment or not. The testimony of the Indian agent and one of the Auditors of the Treasury Department, and the testimony of another official, as to the above was to the effect that both Vann and Adair said at the time that they would not receive the \$50,000 in full payment, but would accept it as payment on account, and it was paid and accepted under those conditions. And they have ever afterwards made a claim for the remainder due under their contract.

This money was paid in July, 1874. In December, 1874, a petition signed by the governor and a number of the leading men of the Osage Nation, confirming the payment of \$50,000 and asking that the balance be paid, was presented.

Subsequently the Interior Department again took up this claim for the services of Vann and Adair and received further proof as to their services, so that I think the \$50,000 can in all justice be said to be a partial payment only. It was so understood by Vann and Adair and by the officers of the Government who had official connection with it.

Mr. HOGG. What was the result of the investigation?

Mr. HEMPHILL. I will state it in regular order. When it came into the Department of the Interior the question was raised as to whether the Secretary who was then in office could take up a claim or matter which had been acted upon and considered by his predecessor; and the Secretary of the Interior held that he could not do so, and therefore no action was taken.

Subsequently Hon. Zach. Chandler, Secretary of the Interior, took the matter up for consideration, and stated that nothing ever ought to have been paid. His idea was that instead of the funds of the Indians being used for services of that character the United States should pay for such services. The United States would hardly consent to make a treaty and employ counsel at the expense of the Government to set it aside, because the Indian Department and the President and the Senate were in favor of the treaty.

It was subsequently up before Mr. Teller, as Secretary of the Interior, and he referred it to Assistant Attorney-General McCammon, who investigated the entire claim from beginning to end and reported upon it. His report subsequently received the approval of the Secretary of the Interior. Mr. Teller approved it February 26, 1883.

Mr. BURKE. That was for \$230,000?

Mr. HEMPHILL. Yes. Mr. Teller says: "I have examined this and believe it to be correct, and I approve the same."

Mr. HEMPHILL. This is the last official action taken by any Department upon the subject. During Mr. Teller's administration he referred the case to the Court of Claims, and in the Court of Claims the question was raised by the counsel for the Osages as to whether Secretary Teller had any authority to refer the case to the Court of Claims under the Bowman Act of 1883. The counsel in the case, on both sides, stipulated that the only question that the court could pass upon was the question as to whether or not the Secretary of the Interior had authority to take up the case for consideration, and the finding of the court was that he did not have authority to consider the question, and the basis of that was a then recent decision in the case of the State of Illinois v. The United States, in 20th Court of Claims. So far as official action of the Department is concerned, the report made by Mr. McCammon and approved by Mr. Teller is the last action that has been taken.

Mr. BURKE. What was the theory of the decision of the Court of Claims, that one Secretary of the Interior could not review a matter that had been determined by his predecessor?

Mr. HEMPHILL. That the matter could not be taken up because already administered by his predecessor.

Mr. BURKE. That was the decision of the Secretary that was considered to dispose of the case, or upon what theory was that decision rendered?

Mr. HEMPHILL. There had been a decision by Secretary Chandler, which was that there was nothing further due on it, in his judgment.

Mr. HOGG. Will you be kind enough to discuss the reasons for opposing the payment of this sum?

Mr. HEMPHILL. Some gentlemen here will make that point in opposition to it. So far as the action of the Osages is concerned, they first employed Vann and Adair verbally in 1868. Nobody can deny that. Their contract was for 50 per cent of the amount they should save. In 1869 they made a written contract which carried out their original agreement of 50 per cent. They entered into an agreement that they should be paid a fee amounting to one-half they should save. In 1873 the governor and the council entered into a written contract with these gentlemen, reducing the amount from one-half down to the sum of \$330,000. That was in February, 1873. In June, 1873, that contract was taken up and considered by the Osage council, and was adopted by them, except that it was reduced from \$330,000 to \$230,000. This contract received the approval of the Interior Department, and upon it they paid \$50,000. That contract was by resolution of the Osage national council.

In 1874 the governor and a number of the leading Osages sent a petition or communication to the Department, stating that they approved the payment of the \$50,000 and acknowledging that the balance was due, and asking that they be permitted to pay their honest debts. In 1877 the Osages petitioned the President of the United States to pay the balance due upon this contract, amounting to \$180,000. That the President of the United States transmitted with an indorsement saying that he had no funds at his disposal from which it could be paid, and that their only recourse must be to Congress.

In 1880 an act was passed by Congress relating to the payment of certain debts out of the funds of the Osages, and it was thought by Colonel Adair and some others that it could be made to include this contract for services; and the Osages thereupon drew a warrant for \$180,000, and asked that they be charged with it and that the warrant be retained as a receipt. But that money was never paid.

Mr. HOGG. Why not?

Mr. HEMPHILL. Because the Secretary held that the act of Congress did not cover that contract. In 1903 the council passed an act asking that the debt be paid, the only condition being that it be paid out of the accumulated interest of their funds, and not out of the principal. That was transmitted to the Secretary of the Interior by the Indian agent, who says that so far as he can gather, all of the old people, those acquainted with the services, are in favor of the payment of this debt. The younger people and those who have intermarried opposed it. There has been opposition to this payment on one pretext or another. This contract for \$230,000 received the approval of the Secretary of the Interior, and it was upon that he paid the \$50,000. The question is as to the payment of the balance. That has been investigated very efficiently by a gentleman of unimpeached character and ability as a lawyer, Mr. McCammon, while Assistant Attorney-General, who reported on the case, holding the balance of \$180,000 was justly due, and whose report Secretary Teller approved.

Mr. BURKE. Was it held by the Department of the Interior that the act of Congress of 1880 was not broad enough to include that kind of a claim?

Mr. HEMPHILL. Yes, sir. That act provided for payment of debts of the Osages connected with their trust lands.

Mr. BURKE. In what year was that?

Mr. HEMPHILL. That was in 1880. Mr. Pierpont, Attorney-General, rendered an opinion that this was a legal debt and should be paid by the United States. Mr. Evarts, formerly Secretary of State, and Attorney-General, gave an opinion that it was a proper contract and a reasonable compensation for their services. The Indian Committee of the House, in the Forty-fourth Congress, took this question up and made an elaborate report in favor of it, and there was but one dissenting voice in the committee.

In the Forty-sixth Congress it was taken up, and again reported unanimously as a just and honest claim. Of course, whenever a man accomplishes anything, there are always to be found a number of people bobbing up and saying that he did not do it, but "I did it myself." We find them simply saying: "Vann and Adair did not do

anything." Who these people are I do not know, but it is certain that Vann and Adair were the regular attorneys and had a fee at stake; the results were accomplished, and it is reasonable to believe that they did what was done. If you are an attorney, and employed to prosecute a case, it is a reasonable presumption that you tried the case, though some other man says he "butted the bull off the bridge."

Vann and Adair were in the Cherokee country when this unfortunate treaty of 1868 was made by the Osages. They had nothing more to do with it than I had. When the Osages found that they were in trouble they sent down to the Cherokee country for Vann and Adair to take care of their interests and to come to Washington, which they unquestionably did. They were here from the start to the end of the controversy. I understand that it is stated that somebody else did this business; but it is fortunate that there is a record in connection with this matter, and I have here a statement of Senator Pomeroy, of Kansas, and of Senator Harlan, of Iowa, chairman of the Committee on Indian Affairs, and statements of others, including Sidney Clark, then a Member from Kansas, and chairman of the Committee on Indian Affairs at that time. If the committee will permit me, I will read what he says:

STATEMENT OF THE HON. S. CLARK, CHAIRMAN INDIAN COMMITTEE OF THE HOUSE IN 1869-70.

LAWRENCE, KANS., May 21, 1875.

SIR: Col. W. P. Adair, of the Cherokee Nation, has requested me to make a statement to you, and through you to the honorable board, of my knowledge of the services that himself and Col. C. N. Vann, also of the Cherokee Nation, rendered before the different Departments of the United States Government in the defeat of the Osage treaty of May 27, 1868, which was withdrawn by the President from the United States Senate, and in securing an amendment to the Indian appropriation bill of July 15, 1870, which passed the Forty-first Congress, whereby the Osages are to get pay for their lands in Kansas at \$1.25 per acre, less the cost of the survey of these lands.

In the first place I would state that I represented the State of Kansas in the House of Representatives of the United States during the Thirty-ninth, Fortieth, and Forty-first Congresses, my services commencing on the 4th of March, 1865, and ending on the 4th of March, 1871. I was chairman of the Committee on Indian Affairs of the House during the last two years of this service. In order that I may make my statement as correct as possible, I have carefully examined the public documents and my private papers, connected with and having reference to the treaty and act of Congress of July 15, 1870, referred to. You will remember the treaty between the Commissioner of Indian Affairs and the Osage Indians referred to, and which Messrs. Adair and Vann claim to have defeated, was made May 27, 1868.

Soon after this treaty was made, Colonel Adair, who was then in Washington, came to me and informed me that the Osages were very much displeased with this treaty and wanted it defeated; and in this connection he showed me some letters that he had received from the Osages, numerous signed, in which they (the Osages) declared that they were scared into the treaty by threats, and in which letters they authorized him (Colonel Adair) to act for them in the defeat of the treaty and in the procurement of the highest possible price for their lands in Kansas. Also, about the same time, Mr. A. N. Blackledge, of this city, who acted as secretary to the Commission that made the treaty referred to, came to me and said that he was employed by Colonel Adair as an attorney to aid in the defeat of the treaty, and stated, also, that he was present when the treaty was negotiated, and that it was a fraud on the Indians, and that he so pronounced it when it was being negotiated, and that the Osage Indians, to his personal knowledge, were very much displeased with it.

Colonel Adair and myself had several interviews with regard to the most successful method of defeating the treaty. He advised that I, as a member of Congress, should call the Osages together in council in order to get their views in reference to the treaty, and accordingly I did get the Osages together in general council, I believe in July or August, 1869, and found that they were, as Colonel Adair had assured me, very much opposed to this treaty and had signed it through fear, and wanted it abrogated. The proceedings of this Indian council were published in the Daily Tribune of this city in August, 1869. I immediately repaired to Washington, where I met Colonel Adair by previous appointment.

On or about the 10th of August, 1869, I addressed a letter to Hon. E. S. Parker, Commissioner of Indian Affairs, or to the Indian Office, transmitting a copy of the proceedings of this Indian council as published in the Tribune and remonstrating against this treaty as a fraud upon the Indians, and stating that they were very much opposed to it, and alleged that they were scared into its negotiations by threats, and

desired it set aside, as the proceedings of the council would show, and in that connection I asked that the Indian Office take steps to have the circumstances under which the treaty was negotiated investigated, to the end that it might be canceled as a fraud, so that the Indians as well as the settlers might be protected.

It had been previously understood between Colonel Adair and myself that if the Indian council referred to should warrant it that I should write to the Indian Bureau such a letter as I did write on the 10th of August, 1869, whereupon he agreed upon his part to confer with Hon. E. S. Parker, Commissioner of Indian Affairs, and to urge upon him the appointment of the Superintendent of Indian Affairs or some other good officer to proceed and investigate the circumstances under which the treaty was made, and to ascertain the unbiased wishes of the Osages with regard to the treaty. I learned afterwards that Colonel Adair performed this duty.

During the progress of our opposition to this treaty I conferred from time to time with Colonel Adair as the attorney for the Osage Indians, and in 1869 and 1870 Col. C. N. Vann also appeared in Washington as Colonel Adair's associate, when I conferred with both of them from time to time and had a perfect understanding with them in relation to our opposition to the treaty referred to, and frequently after conferring with them I presented their views as representing the Osages in opposition to the treaty with my own in behalf of the settlers to the President, who promised to withdraw the treaty from the Senate if fraud could be shown in its negotiations. On one or two occasions I went in person with Colonel Adair to see the President, who promised to withdraw the treaty from the Senate.

After consultation with Messrs. Adair and Vann and several United States Senators, it was considered impossible to defeat the ratification of the treaty before the Senate, and that the most feasible and effectual way by which it could be annulled would be to prevail upon the President to withdraw it from the Senate, for the reason that it was supported by six railroad corporations, viz, the Leavenworth, Lawrence and Galveston Railroad Company, the Atchison, Topeka and Santa Fe Railroad Company, the Union Pacific Railway, Southern Branch Railway Company, the Leavenworth and Topeka Railway Company, and the Lawrence and Neosha Valley Railroad Company.

After the treaty was sent to the United States Senate for ratification, the railroad corporations combined to appropriate to themselves the Osage lands disposed of in the treaty without, however, increasing the price of the lands, and they succeeded in getting a majority of the United States Senate Indian Committee to agree to such amendments to the treaty as suited for their purposes. About the time this treaty was considered as defeated, viz, January, 1870, I introduced into the House of Representatives a bill (H. R. 998) to dispose of the Osage lands named in the treaty to actual settlers. The bill provided in substance that settlers only shall take the lands referred to at \$1.25 per acre and that the Osages should remove to the Indian Territory and that the proceeds of the lands should be placed to the credit of the Osages, bearing interest at the rate of 5 per cent per annum until such proceeds should aggregate the sum of \$1,000,000, as a consideration in full to the Osages for their lands. All amounts paid by the settlers for these Osage lands beyond the \$1,000,000 allowed to the Osages for the lands was to be turned over to the Government of the United States under the homestead laws as money belonging to the Government.

Colonels Adair and Vann opposed this bill of mine very bitterly, taking the ground that the lands in question belonged to the Osages, and that therefore they, and not the United States Government, should have the proceeds of the lands, and that if my bill became a law it would wrong the Osages out of at least \$10,000,000 as the proceeds of their own lands. But being anxious that the settlers should get the lands I pushed my bill before the Indian Committee of the House of Representatives, of which I was chairman, and on January 31, 1870, I, by instructions from my committee, reported back to the House my bill referred to and moved to suspend the rules of the House in order to pass it. But in view of the opposition of Messrs. Adair and Vann and their friends in Congress my motion failed, and thus my bill was defeated.

After the defeat of my bill I had a conference with Adair and Vann, in which we agreed to the following propositions, viz: That the settlers, instead of the railroad companies referred to, get the lands of the Osages at \$1.25 per acre, and that the Osages, instead of the United States Government, get all the proceeds of their lands, etc. To carry out this understanding, we agreed to endeavor to amend the Indian appropriation bill (then pending before Congress). Accordingly I prepared an amendment to be submitted to said bill in the Senate, which met the approval of Messrs. Adair and Vann. I had this amendment alternately in the hands of Senators Harlan, Pomeroy, and Morrill, of Maine.

I went into the Senate Chamber in person, and conferred with the Senators referred to, as well as with others, and urged the adoption of this amendment to the Indian appropriation bill, while Adair and Vann and their other friends were working with Senators for the measure outside. Finally, at the proper time, Senator Morrill, of Maine, if I remember correctly, presented the amendment and it was adopted and became a part of the original bill as it now stands in the statute books, just as it was agreed upon between Adair and Vann and myself, and was approved by the President July 15, 1870.

As regards the contract between Adair and Vann and the Osages, under which the former claim pay for their services, I have only to say that I had understood that the Osages had made a contract with these gentlemen to pay them for what I consider valuable services; but as to the amount these gentlemen were to get from the Osages I knew nothing, as I was in no way pecuniarily interested with them, or any other party. As before stated, I knew that Colonel Adair was employed in 1868 to assist the Osages in the defeat of the treaty and in the procurement of as large a price for the Osage lands as possible for the Osages, and that in 1869 and 1870, and in fact up to the expiration of my service as a member of Congress, Colonels Adair and Vann were both recognized as attorneys for the Osages, and acted as such, and were so received by my committee and members of both branches of Congress and the Departments.

I have not seen the contract under which the Osages have agreed to pay Adair and Vann for their services until recently. I have carefully examined this contract, and under all the circumstances, considering the protracted and valuable services of Adair and Vann for the Osages, during my service in Congress, I think the fee agreed upon between these gentlemen and the Osages in said contract is very just and reasonable, as it is equivalent to only about to between 2 and 3 per centum of the amount secured to the Osages for their lands in Kansas beyond the amount provided for in the treaty that was defeated, as referred to.

I have the honor to be, very respectfully, your obedient servant,

SIDNEY CLARKE.

Mr. HEMPHILL. Mr. Clark was of course representing the settlers who wanted these lands. They had these railroad companies against them.

There are other affidavits and statements by Senators and others bearing out the statements made by Mr. Clark. Mr. Clark is a worthy and reliable man and will not say anything to-day inconsistent with his statement here. The statements of such honorable gentlemen of the House and Senate, made at the time when the services were rendered, must carry great weight, and in view of these the Osages should be permitted to pay the debt, which resulted in saving from \$8,000,000 to \$10,000,000 in the value of the lands. That money has now been drawing interest for thirty years by reason of the services of Vann and Adair, and I do not think that it lies in the mouth of anybody to say that if an attorney renders valuable services of that kind, resulting in such a saving, he should not be paid.

Mr. HOGG. It ought to be determined not on the question as to whether they have made a contract, but on whether they rendered services.

Mr. HEMPHILL. I think the question is whether these people rendered services. As to whether it was a contract, does not seem to cut much figure. It is certain that the claim of Vann and Adair for services is properly made out, and they are entitled to be paid.

Mr. BURKE. Is there any question made as to the regularity of the meeting of the council at which this resolution was adopted that provides for the payment of the claims on this basis?

Mr. HEMPHILL. I understand that some objection has been made to it. I think that I can establish beyond all doubt that it was one of the largest meetings that the Osages ever held, and that it resulted in a discussion for five or six days in the presence of the Indian agent and another officer of the Government.

Mr. HOGG. During the time that these gentlemen represented the tribe was there any protest made by the Osages, or by any one for them, as to whether they were acting in behalf of the tribe?

Mr. HEMPHILL. I never heard of it.

Mr. HOGG. They permitted these gentlemen to go ahead and represent them, and got the benefit of their services and made no protest.

Mr. HEMPHILL. None whatever.

Mr. CURTIS. You ought to be fair to the committee, and state that the contract was not made until after the services. There was a protest signed by two hundred and odd members of the tribe.

Mr. HEMPHILL. That was after the services were rendered.

Mr. HOGG. The original contract was abrogated, and afterwards was cut down. Was there any objection at the time of their original employment?

Mr. CURTIS. That fact will be brought out in a statement later on. There is a record on that.

Mr. HOGG. If attention were called to that it would be a material matter.

Mr. HEMPHILL. It seems to me that if there was any objection, or if they were going to file any objection, the time to object was when these people were appearing before Mr. Clark, and when he was calling on the council.

Mr. HOGG. That is the reason I asked the question.

Mr. HEMPHILL. The Senate committee investigated the matter at the last session of Congress, and reported in favor of it by a unanimous vote. In the Forty-fourth and Forty-sixth Congresses the committee of this House reported favorably upon this bill of Vann and Adair for services.

Mr. BURKE. It seems that it is not so much a question of the payment of the services as it is whether or not they have been paid in full; and I notice in this letter that it refers to the act of Congress when this claim was paid, and it says that no money shall be paid for such services until such persons shall file a statement showing the services under the contract, and giving the facts to the Secretary of the Interior and the Commissioner of Indian Affairs. Have you anything to say on that subject?

Mr. CURTIS. The payment of \$50,000 was in full for past services.

Mr. HOGG. These parties have been going ahead with this contract in the regular way, and I hardly think that after services had been rendered the Department could fix the contract. The statement made here, and which has been referred to, says that these parties only accepted this money as part payment. That seems to have been agreed to. If that be true, it leaves the matter open as to what the contract was.

STATEMENT OF MR. W. M. DIAL.

Mr. BURKE. State for whom you appear.

Mr. DIAL. I appear for the Osage Nation—Mr. Lombard, Mr. Trumbull, Mr. C. W. Brown, and myself.

Mr. HEMPHILL. I would like the gentleman to state whom he represents, because I have heard that he was appointed at a meeting of the Osages for the purpose of looking after the interests of the white people.

Mr. BURKE. State briefly in what capacity you appear, and whom you and your associates represent.

Mr. DIAL. We are sent by a mass meeting of the citizens of the Osage Reservation to come here and look after legislative matters for the Osages. I am a citizen of the nation by marriage, and represent the white people and those who have intermarried.

After the adjournment of the Fortieth Congress Mr. Clark stated in reference to this matter that he went down to the Osage Reservation and had a meeting with the Osage people, and took a stenographer along and had a hearing with reference to the proposed meeting with Mr. Stubbs; on returning to Congress in 1869 he went to the President of the United States with this matter, under instructions of the authorities in Kansas; and that the whole interest of the proposition, so far as he was concerned, was entirely to preserve the 444,000 acres of land in Kansas. The next day the President sent a message to the Senate withdrawing that resolution, and he further told me that the day following, six United States Senators went and asked to have the resolution returned to the Senate.

Mr. HOGG. What has that got to do with the proposition?

Mr. DIAL. It shows that Vann and Adair—I do not say here, but before the Senate committee—it shows that the services had been acquired in getting everything in this way.

Mr. BURKE. You mean that he told you that his only interest was to represent the State of Kansas?

Mr. DIAL. Yes, sir.

Mr. BURKE. They being deprived of the sixteenth and thirty-sixth sections?

Mr. DIAL. He claimed that he appeared in the interest of the State of Kansas.

Mr. BURKE. The statement read by Mr. Hemphill shows that he did introduce a bill later on, which became a law, which gave the Indians an eighth or a tenth, and that was subsequently agreed to.

Mr. HOGG. I would like to suggest that we had better hear these gentlemen on this original contract with Vann and Adair; how it was entered into; what they were to do; what they did, if anything, under the contract; to what degree the contract was

modified afterwards; what was paid upon it, and what was understood at the time the payment was made. That is all there is in this matter, it seems to me.

Mr. DIAL. Very well. This first contract was entered into in 1873 for \$330,000. Later on it was cut down to \$230,000. These gentlemen were ordered off the reservation. They merely went around the camp with this contract. In reference to the action on that contract in 1873, it was not a legal contract. In view of their action, the Osages got onto them, and they ordered these people off the reservation. Mr. Trumbull was present at that time, and he knows the circumstances and all about it. He can speak for himself. He has told me that everybody opposed it. Every effort was made in 1873 to defeat it. The claim was for work that had been done five years previous to that. It was five years later and it was cold. He says that the majority of the people did not know of any services that had been rendered by Vann and Adair.

Mr. BURKE. You claim that there was no contract at all prior to 1873?

Mr. DIAL. That is the first contract.

Mr. HOGG. What about the 50 per cent commission?

Mr. DIAL. If there was a contract it must have been a verbal one. It was done out in the camp.

Mr. CURTIS (to Mr. Dial). The record shows that there was some kind of a contract, and it was brought back and turned over to Chief Joseph. He said that they had rendered no services. That is the evidence.

Mr. DIAL. The first contract that appeared in this matter was the approval of 1873.

Mr. BURKE (to Mr. Curtis). Is there a written contract that turned up?

Mr. DIAL. The testimony shows that there had been services rendered for which they made a charge. Chief Joseph said that he would give the contract back.

Mr. BURKE. When was that?

Mr. CURTIS. In 1869.

Mr. BURKE. This communication to the Department states that Secretary Teller submitted the claim to Attorney-General Brewster on May 30, and it was forwarded to the Secretary with an adverse opinion. What was the date of Secretary Teller's report?

Mr. HEMPHILL. His approval was February 26, 1883.

Mr. BURKE. The first approval was in April, 1884.

Mr. HEMPHILL. My recollection is that Mr. Brewster was one of the attorneys-general—I think it was Mr. Brewster—who said that the Secretary of the Interior had no authority to reconsider or to reopen it.

Mr. HOGG. I would like to see that opinion of Mr. Brewster.

Mr. NEIL. My recollection is that he decided that Secretary Teller had no right to open the case; that it should go to Congress.

(At this point the committee took a recess until 1.30 p. m.)

Mr. Burke submitted the following from the Department to be made a part of the record:

DEPARTMENT OF THE INTERIOR,
Washington, March 27, 1906.

The CHAIRMAN OF THE COMMITTEE ON INDIAN AFFAIRS,
House of Representatives.

SIR: I have the honor to inclose herewith, copy of a letter from the Acting Commissioner of Indian Affairs dated the 27th instant, together with a copy of a report from the Indian Office of February 3, 1905, in connection with the claim of C. N. Vann and William P. Adair against the Osage Nation, amounting to \$180,000.

The Department is informed that a hearing in this case is to be had before your committee to-morrow morning, the 28th instant, and your attention is called to the statements made in the letter from the Commissioner, and also to the views expressed by me in my letter of February 7, 1905, copy herewith.

Very respectfully,

THOS. RYAN, *Acting Secretary.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, March 27, 1906.

The SECRETARY OF THE INTERIOR.

SIR: The office is in receipt of a letter from C. W. Brown, A. Lombard, and W. M. Dial, members of the Osage delegation now in the city, dated March 26, inclosing an amendment to be proposed by Senator Teller to the bill (H. R. 15331) making appropriations, etc., for the contingent expenses of the Indian Department for the coming fiscal year, to pay to the executor or administrator of the late C. N. Vann and W. P. Adair, respectively, an alleged balance due on a claim against the Osage

Nation amounting to \$180,000. They say that the case was argued last week before the Senate Committee on Indian Affairs and is to be presented to the House committee on Wednesday of this week. They appeal to this Department to detail some suitable person to represent the tribe before the committee.

I have the honor to say in relation to the matter that on February 3, 1905, this Office made an adverse report on said claim for transmission to Congress. See Office letter to the Department of that date. A copy is inclosed herewith for your information. On March 21, at the request of Senator Dubois, a copy of the report was sent to the chairman of the Senate Committee on Indian Affairs in connection with the said proposed amendment.

It is impossible at this late date to secure the necessary action by the Osage council for the employment of an attorney to represent the tribe before the committee to-morrow. The question of detailing some one from the Department to represent the nation is one for your determination. At all events I recommend that the inclosed copy of Office report of February 3, 1905, be transmitted to the House committee for to-morrow's meeting.

The letter and a copy of the proposed amendment are inclosed herewith.

Very respectfully,

C. F. LARRABEE, *Acting Commissioner.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 3, 1905.

The SECRETARY OF THE INTERIOR.

SIR: The Office has the honor to acknowledge the receipt, by Department reference of January 30, for report, of a communication from Hon. Wm. M. Stewart, chairman of the Senate Committee on Indian Affairs, submitting a proposed amendment to the pending Indian appropriation bill, as follows:

"To pay to the executor or administrator of the late C. N. Vann and William P. Adair, respectively, the balance due under the resolution of the national council of the Osage Indians, passed and approved on the twenty-sixth day of June, eighteen hundred and seventy-three, one hundred and eighty thousand dollars, to be paid out of the proceeds of the sales of the Osage lands in Kansas."

Senator Stewart requests a report by this Department upon said proposed amendment for the use of his committee.

Reporting upon the proposed amendment, the Office has the honor to state that it grows out of the former claim of C. N. Vann and William P. Adair for services rendered the Osage Indians under a contract for services, dated February 8, 1873, providing for the payment to said parties of the sum of \$230,000. The entire history of the transaction is printed as Senate Executive Document No. 29, Forty-third Congress, second session, to which attention is respectfully invited.

By the provisions of the act of Congress of May 21, 1872 (17 Stat. L., 136), this contract or agreement with the Osage Indians was null and void and of no effect until its approval by the Secretary of the Interior and the Commissioner of Indian Affairs. The contract came before the Office for action on July 8, 1874. In a letter of that date, in transmitting the contract to the Secretary of the Interior, the then Commissioner stated:

"Respecting this contract, I beg leave to say that from the best information I can procure I have no hesitation in admitting that the great gain to the Osages, amounting to over \$5,000,000, in the final sale of their lands, was largely due to the services of Vann and Adair; but in the nature of the case these services could not have been so arduous or valuable in themselves as to warrant the payment of the full amount still offered by the Osages, and I recommend that the contract be approved for the sum of \$50,000, to be paid these attorneys in lieu of all claims for past services for the Osage Nation."

The contract was returned to this Office by the Secretary of the Interior on July 21, 1874, with the following letter:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., July 21, 1874.

The COMMISSIONER OF INDIAN AFFAIRS.

SIR: I return herewith, approved to the extent of \$50,000, the contract referred with your letter of the 8th instant between C. N. Vann and William P. Adair and the Great and Little Osage Nation of Indians, entered into on the 8th day of February, 1873, the said sum to be in payment for services rendered by Vann and Adair as attorneys for said nation.

Very respectfully, your obedient servant,

B. R. COWEN,
Acting Secretary.

This sum of \$50,000 was paid said parties out of the appropriation for current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1875 (see p. 2 of said Senate executive document). And from the language used by both this Office and the Department it is conclusive that said sum was in full of all services rendered under the contract or agreement; and Messrs. Vann and Adair in accepting it must have accepted it under this assumption. The said act of Congress of May 21, 1872, *supra*, provides:

"Provided, That no money or thing shall be paid to any person for services under such contract or agreement until such person shall have first filed with the Commissioner of Indian Affairs a sworn statement, showing each particular act of service under the contract, giving date and fact in detail, and the Secretary of the Interior and Commissioner of Indian Affairs shall determine therefrom whether, in their judgment, such contract or agreement has been complied with or fulfilled; if so, the same may be paid, and if not, it shall be paid in proportion to the services rendered under the contract."

In approving the contract for \$50,000, and in submitting the same to the Secretary of the Interior, the then Commissioner of Indian Affairs recognizes the valuable services rendered the Indians by said parties and then adds: "But in the nature of the case these services could not have been so arduous or valuable in themselves as to warrant the payment of the full amount still offered by the Osages, and I recommend that the contract be approved for the sum of \$50,000, to be paid these attorneys *in lieu of all these claims for past services for the Osage Nation.*"

The emphasis is mine, but the words are those of the then Commissioner who considered the contract and submitted it to the Secretary for his action. It must be presumed that the Commissioner took said act of Congress into consideration and approved the contract in proportion to the services rendered; and it is hard to conceive what language he could have used that would have more specifically or clearly showed his intention that the amount for which he approved the contract should constitute full and complete satisfaction for all past services rendered by said attorneys. And in accepting this amount the parties must be presumed to have accepted it in the legal intent of the Commissioner, namely, "in lieu of all claims for past services for the Osage Nation."

On the 24th of April 1875, the Secretary of the Interior referred the claim for \$230,000 to the Board of Indian Commissioners for their report and an expression of their opinion as to the merits of the case. On the 29th of July following the Board resolved that the evidence presented in support of said claim did not, in their judgment, establish its validity; that the amount allowed, \$50,000, if any payment was justifiable, was ample for the services alleged to have been rendered. The papers were returned with the earnest recommendation that no further payment be made thereon.

On the 7th of December 1875, Secretary Chandler, in considering the application of Vann and Adair, for the further payment of \$180,000 on said contract, affirmed the action of his predecessor and of the Board of Indian Commissioners, and declined to make any further payment, holding that the claim of Vann and Adair had no standing either legal or equitable.

Secretary Kirkwood, on the 6th of May, 1881, having the above claim under consideration, also affirmed the action of his predecessor in the case, and refused to take any further action.

On the 1st day of April, 1884, Secretary Teller submitted the claim to Attorney-General Brewster, who, on the 30th day of April, 1884, forwarded to the Secretary of the Interior his opinion, which was also adverse to said claim.

Finally the matter was sent by Secretary Teller to the Court of Claims, September 17, 1884 (Departmental case No. 19), for its opinion, which was rendered adversely to said claimants, December 12, 1887, the court holding, in view of the opinion of the court in the case of the State of Illinois v. The United States (20 C. Cls. R., p. 342), that the Secretary of the Interior had no authority to reopen the claim.

In the light of the facts in the case as disclosed by the records of this office, I am of the opinion that Messrs. Vann and Adair never had a valid or legal claim against the Osage Indians for any amount in excess of that already paid them; that the \$50,000 paid them was thought at the time to be a liberal and full compensation for all services rendered and for all expenses incurred in behalf of the Osage Nation; that it was intended by the then Commissioner of Indian Affairs and the Secretary of the Interior that the amount allowed and paid said parties should be in full for all services theretofore rendered the Osage Nation; and that the claim of the heirs of said parties for further compensation under said contract or agreement is, under the circumstances, without merit, and should not be allowed or paid, either by the

Osage Nation or by the United States on behalf of said nation. I am therefore of the opinion that the proposed amendment should not be made, and so report.

Senator Stewart's letter and the proposed amendment are returned herewith; copy of this report also inclosed.

Since writing the above I have received from Messrs. S. C. Neale and John J. Hemphill, attorneys for the claimants, a communication relating to said proposed amendment. Messrs. Neale and Hemphill give what purports to be a statement of the action taken in the case since February 18, 1875, and printed as said Senate Executive Document No. 29, *supra*; also what purports to be a printed copy of an opinion rendered the Secretary of the Interior by Hon. Jos. K. McCammon, formerly Assistant Attorney-General for this Department.

I have examined both the letter of Messrs. Neale and Hemphill and the printed matter referred to and fail to discover any reason for changing either the views above expressed or the recommendation above made. The letter of Messrs. Neale and Hemphill and the printed matter inclosed are transmitted herewith for your information.

Very respectfully,

F. E. LEUPP,
Commissioner.

DEPARTMENT OF THE INTERIOR,
Washington, February 7, 1905.

The CHAIRMAN OF THE COMMITTEE ON INDIAN AFFAIRS,
United States Senate.

SIR: I have the honor to acknowledge the receipt, by your reference of the 27th ultimo for report, of a proposed amendment to the pending Indian appropriation bill (H. R. 17474) providing for the payment to the heirs of Vann and Adair of the sum of \$180,000 out of the funds of the Osage Indians.

In response, I transmit, herewith, a copy of a report from the Commissioner of Indian Affairs, dated the 3d instant, which gives a full history of the origin of the claim of C. N. Vann and William P. Adair, for legal services rendered by them under a contract with the Osage Indians, dated February 8, 1873. It is clearly shown in the Commissioner's report that the contract fee with these parties was recommended by his Office in the sum of \$50,000, in full of all services rendered by them for the Osage Indians under said contract, said sum "to be paid these attorneys in lieu of all claims for past services for the Osage Nation," and was so approved by the Secretary of the Interior; further, that the said sum of \$50,000 was paid to and accepted by Messrs. Vann and Adair on the basis, undoubtedly, as stated in the indorsement of approval, namely, "in lieu of all claims for past services for the Osage Nation."

It is further shown that the claim of these attorneys for \$230,000 was considered by the Board of Indian Commissioners, who concluded that the payment made—\$50,000—was ample for the services alleged to have been rendered and earnestly recommended that no further payment be made; that the Secretary of the Interior, Mr. Chandler, on December 7, 1875, affirmed the action of his predecessor and of the Board of Indian Commissioners on the claim and declined to make any further payment, holding that the said claim had no standing, either legal or equitable; that Secretary Kirkwood, on May 6, 1881, in considering the claim, also affirmed the action of his predecessors and refused to take any further action; that Attorney-General Brewster, to whom the claim was referred by Secretary Teller, rendered an opinion under date of April 30, 1884, which was also adverse to the said claim; and, finally, that the Court of Claims, on December 12, 1887, rendered an opinion adverse to the claimants, holding that the Secretary of the Interior had no authority to reopen the claim.

In view of all the facts shown by the records of the Department in the case, the Commissioner of Indian Affairs expresses the opinion that Messrs. Vann and Adair never had a valid or legal claim against the Osage Indians for any amount in excess of that already paid them, which amount—\$50,000—was believed at the time to be a full and liberal compensation for all services rendered and all expenses incurred on behalf of the Osage Nation; that it was intended by the then Commissioner of Indian Affairs and the Secretary of the Interior that the amount so allowed and paid should be in full for all services rendered, and that the claim of the heirs of said parties for further compensation under the said contract or agreement is without merit and should not be allowed or paid, either by the Osage Nation or by the United States on behalf of the Osage Nation; in all of which I fully concur and earnestly recommend that the proposed amendment be not adopted.

The Commissioner forwarded with his said report a communication from Messrs. Neale and Hemphill, attorneys for the claimants, dated February 2, 1905, relating to

the proposed amendment, and inclosing what purports to be a printed copy of an opinion in the case, rendered by Hon. Jos. K. McCammon, then Assistant Attorney-General for the Department. These papers are forwarded herewith, and I agree with the Commissioner that after examination of the same no reason is found to warrant a change either in the views above expressed or the recommendation made.

Very respectfully,

E. A. HITCHCOCK, *Secretary.*

AFTERNOON SESSION.

The committee met, pursuant to the taking of recess, at 2.30 o'clock p. m.

STATEMENT OF W. M. DIAL, OF THE OSAGE NATION.

Mr. DIAL. Mr. Chairman and gentlemen, I have here a brief statement signed by J. B. Trumbly, Albert Lombard, C. W. Brown, and myself, which is as follows:

WASHINGTON, D. C., March 27, 1906.

The COMMITTEE ON INDIAN AFFAIRS,
House of Representatives.

GENTLEMEN: On behalf of the Osage tribe of Indians we beg to inform you, and through you the Congress of the United States, that the proposed amendment to House bill 15331, now pending before your honorable committee and also before the Senate Committee on Indian Affairs, whereby it is proposed to pay to the executor or administrator of the late C. N. Vann and W. P. Adair the sum of \$180,000 out of the proceeds of sales of the Osage lands in Kansas, is unjust in every particular.

It is based on a fictitious claim and has no foundation in fact or standing before the law.

For many years the Osage tribe occupied a reservation of 8,000,000 acres of land in Kansas. In 1868 one William Sturgis, of Chicago, with a party of friends visited the Osages, and by means best known to themselves concluded a treaty objectionable to the State of Kansas. The treaty made no provision for school lands, the sixteenth and thirty-sixth sections of which (444,000 acres) had previously been granted to Kansas for school purposes. As soon as that fact became known the State authorities united with the Kansas Senators and Representative in Congress, as the Congressional Globe shows, and prevented the ratification of the treaty. In 1869 it was withdrawn from the Senate and legislation subsequently enacted by Congress for the sale of said lands at \$1.25 per acre.

C. N. Vann and William P. Adair were the Cherokee delegates in Washington at that time, but they had no more to do with the defeat of that treaty than any other two Cherokee Indians. The chiefs and headmen of the Osage Nation made the treaty in May, 1868, and it was immediately brought to Washington and transmitted to Congress for ratification. It was vigorously opposed and exposed by the press and State authorities of Kansas from the day it was concluded, on the Osage Reservation, and as soon as information reached Washington as to the methods resorted to by Sturgis in procuring the signatures of the Indians and of the unjust provisions of the treaty, the Kansas Senators and Member of the House opposed it so earnestly that it was withdrawn from the Senate. In proof of this, I refer your honorable committee to the depositions of Agent Gibson and others, now on file in the Court of Claims, in the case of Vann and Adair against the United States and the Osage Nation. (Department Case No. 19.)

If Vann and Adair had been employed to assist in defeating this treaty, it is fair to presume that they would have presented a claim for services within a reasonable time after the treaty was withdrawn from the Senate, in the fall of 1869. But they did not do this, nor did the thought of claiming pay for what others had done even suggest itself to their minds until five years had elapsed. Then in 1873 they appeared in the camp of the Osage Indians on their new reservation in the Indian Territory with a contract which they tried to get the Indians to ratify. This contract was not presented to the council or to the agent, but the agent, hearing of their presence among the Osages, ordered them off the reservation. From the Osage camps, with a contract that had never been submitted to the Osage council or their agent, Vann and Adair betook themselves to Washington and early in July, 1874, appeared in the Indian Office with a full-fledged contract for \$230,000. A more baseless, infamous contract was seldom if ever presented before the Department for approval.

Accompanying this so-called contract was a resolution, purporting to have been passed by the Osage national council, and approved on the 26th of June, 1873, ratifying said contract, and requesting that the money be paid. That this resolution was never passed or approved by the Osage national council on the 26th day of June, 1873, or at any other time, is shown by the deposition of Isaac T. Gibson, already mentioned, who was at that time the United States agent for said Indians. Nevertheless, a contract for \$230,000 was filed in the Department of the Interior for approval in July, 1874, and the said contract was on July 8, 1874, approved by the Commissioner of Indian Affairs for \$50,000, in lieu of all claims for past services for the Osage Nation, and on July 21, 1874, by the Secretary of the Interior, for the same amount. Whether valid or invalid, fabricated, or otherwise, it was so approved, and the said Vann and Adair were duly paid the said sum of \$50,000 out of the proceeds of sales of Osage lands in Kansas. Then, having obtained this money so easily and for so little, the said Vann and Adair set about in earnest to procure the additional amount of \$180,000. They first presented their claim to the honorable Secretary of the Interior, Columbus Delano, who on April 24, 1875, referred it to the Board of Indian Commissioners.

On the 29th day of July following, at a regular meeting, the said board adopted the following resolution:

Resolved, That the amount already allowed by the Department, to wit, \$50,000, which was paid on the recommendation of the Commissioner of Indian Affairs in lieu of all claims for past services for the Osage Nation, if any payment was justifiable, is ample for the services alleged to have been rendered."

Again, on the 7th day of December, 1875, Hon. Z. Chandler, Secretary of the Interior, after considering the application of Vann and Adair for the further payment of \$180,000, turned it down and affirmed the action of Secretary Delano and the Board of Indian Commissioners.

Again, on the 14th day of May, 1881, Hon. S. J. Kirkwood, Secretary of the Interior, after carefully considering this claim, turned it down, and affirmed the decisions of his predecessors.

On the 1st day of April, 1884, the Hon. Henry M. Teller, Secretary of the Interior, referred this claim to the Attorney-General, B. H. Brewster, for his opinion, who, on April 30, 1884, rendered an adverse opinion. On September 17, 1884, the Hon. Henry M. Teller, Secretary of the Interior, referred the case to the Court of Claims under the act of March 3, 1883, and on December 12, 1887, the said court transmitted to the Department of the Interior its finding of facts. (Copy herewith marked "Exhibit A".)

Thus four Secretaries of the Interior, the Board of Indian Commissioners, the Attorney-General, and the Court of Claims all considered and condemned this fictitious claim, and yet, in the face of all, Congress is now asked to provide for its payment.

If your honorable committee desires further proof of the worthlessness of this claim it can be supplied from the records of the Interior Department and the evidence on file in the Court of Claims. We therefore submit the matter to you in full confidence that justice will be done.

Very respectfully,

J. B. TRUMBLY,
ALBERT LOMBARD,
C. W. BROWN,
W. M. DIAL,
Osage citizens.

Mr. DIAL (continuing). I also have here a resolution offered by Mr. Clark, of Kansas, at the second session of the Fortieth Congress, as follows:

RESOLUTION BY MR. CLARK, OF KANSAS.

Whereas it is reported that a treaty has recently been concluded with the Great and Little Osage Indians by which it is proposed to transfer 8,000,000 acres of land, located in the State of Kansas, to a railroad corporation; and

Whereas it is reported that by the provisions of said treaty the people of the United States are excluded from the right of homestead and preemption settlement; and

Whereas it is also reported that improper influence has been used to accomplish the framing and signing of said treaty in the interest of the Indians, and the people have been grossly and fraudulently neglected: Therefore

Resolved, That the President is hereby directed to furnish to this House copies of all instructions, records, and correspondence connected with commission authorized to

make the above-named treaty, and copies of all propositions made to said commission from railroad corporations, or by individuals, and the President is requested to withhold said treaty from the Senate until full investigation can be had and a report made by the Committee on Indian Affairs of this House.

Mr. DIAL (continuing). In reply to the resolution of the House of Representatives of the first instance, the President, Mr. Andrew Johnson, sent the following message:

"House of Representatives. In reply to the resolution of the House of Representatives of the 1st instant, I transmit herewith a report from the Secretary of the Interior in reference to the treaty now being negotiated between the Great and Little Osage Indians and the special Indian commissioners acting on the part of the Government."

This is signed Washington, D. C., June 10, 1868, by Andrew Johnson.

Mr. DIAL (continuing). On June 11, 1868, at the second session of the Fortieth Congress, Mr. Clark, of Kansas, moved that the message of the President, with accompanying documents, be printed and referred to the Committee on Indian Affairs with instructions to investigate the circumstances attending the negotiation of the treaty therein referred to, with power to send for persons and papers.

I wish to submit Exhibit A, copy of the record of the Court of Claims in case No. 19. This is a finding of the facts.

Mr. CURTIS. That is the finding of the facts of the Court of Claims?

Mr. DIAL. Yes, sir.

I would further like to say, in reference to the action of the council in 1873, that I would like to specially call the attention of the committee to the affidavit of the Indian agent, Isaac T. Gibson, on file in the Court of Claims, with reference to the findings in Exhibit A here as presented.

Mr. BURKE. Is the affidavit of Mr. Gibson here?

Mr. DIAL. It is in evidence.

Mr. CURTIS. I have extracts of it here which I will read later.

Mr. DIAL. Mr. Gibson sets out the fact that these attorneys came on the reservation among the Indians and that the council that made this contract was not a legal council, and they ordered them (Vann and Adair) off the reservation, and I think he further states in that affidavit that they maneuvered around from camp to camp among the Indians, and the round-up of the whole proposition was a contract for \$230,000. I believe that is all I have to say, gentlemen, at this time.

Mr. BURKE. Are any of those Indians present that you state were there at the time?

Mr. DIAL. Yes; Mr. Trumbly is here.

Mr. BURKE. I think we will have a little statement from Mr. J. B. Trumbly.

Mr. DIAL. I will state that I was not present at that time.

Mr. HEMPHILL. You are not a Cherokee at all?

Mr. DIAL. None of us are Cherokees.

Mr. HEMPHILL. I mean you are not an Osage?

Mr. DIAL. Yes, sir.

Mr. HEMPHILL. You married an Osage woman?

Mr. DIAL. Yes.

Mr. HEMPHILL. When did you go in there; when did you marry her?

Mr. DIAL. About ten years ago. I have been around the reservation about seven-teen or eighteen years, though.

EXHIBIT A.—Filed by Mr. Dial.

[Court of Claims. Departmental case No. 19. Vann and Adair v. The United States.]

FINDINGS OF FACT.

At a Court of Claims held in the city of Washington on the 12th day of December, 1887, the court filed the following findings of fact and conclusion of law, to wit:

The claim or matter in the above-entitled case was transmitted to the court by the honorable the Secretary of the Interior on the 17th day of September, 1884.

John C. Fay, esq., appeared for claimants; Samuel J. Crawford, Earle and Pugh, and William T. S. Curtis, esqs., appeared for the Osage Nation; and the Attorney-General, by E. M. Watson, esq., his assistant, with whom was Robert A. Howard, esq., Assistant Attorney-General, and under his direction, appeared for the defense and protection of the interests of the United States.

The case having been brought to a hearing on the 31st day of May, 1887, the court, upon the evidence and after considering the briefs and arguments of counsel on both sides, finds the facts to be as follows:

I. That the claim of petitioners is for the payment of the sum of \$180,000 out of the Osage trust funds, which sum of \$180,000 is alleged to be still due the petitioners under an alleged contract entered into by and between C. N. Vann and William P. Adair and the Great and Little Osage Nation of Indians on the 8th day of February, 1873, and which contract purports to have been ratified in open council June 26, 1873, whereby, as is alleged, the said Vann and Adair, for and in consideration of the sum of \$230,000, agreed to render to the said Indians certain services in preventing the confirmation of the treaty made with the said Indians on the 27th day of May, 1868, for the sale of the Osage Reservation in the State of Kansas.

II. That this contract was submitted by the claimants to the Commissioner of Indian Affairs and the Secretary of the Interior in 1874, for their approval, and for the payment of the consideration named therein of \$230,000, or for so much as they deem just and equitable in the premises upon which submission the Commissioner of Indian Affairs indorsed on said contract the words and figures following, to wit:

DEPARTMENT OF THE INTERIOR,
Indian Office, July 8, 1874.

Approved for \$50,000.

EDW. P. SMITH, *Commissioner.*

The contract having been referred to the Secretary of the Interior, it was returned to the Commissioner of Indian Affairs upon the 21st day of July, 1874, with the accompanying letter:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., July 21, 1874.

SIR: I return herewith, approved to the extent of \$50,000, the contract referred with your letter of 8th instant, between C. N. Vann and William P. Adair, and the Great and Little Osage Nation of Indians, entered into on the 8th day of February, 1873, the said sum to be in payment for services rendered by Vann and Adair as attorneys for said nation.

Very respectfully, your obedient servant,

B. R. COWEN,
Acting Secretary.

THE COMMISSIONER OF INDIAN AFFAIRS.

which said sum of \$50,000 was paid the said claimant.

III. That on the 24th day of April, 1875, the Secretary of the Interior referred the said claim of Vann and Adair for \$230,000 to the Board of Indian Commissioners for their report, with an expression of their opinion as to the merits of the case.

The said Board, upon the 29th day of July, 1875, at a regular meeting, adopted the following resolutions:

"Resolved, That the evidence presented in support of the said claim does not, in the judgment of the Board, establish its validity.

"Resolved, That the amount already allowed by the Department, to wit, \$50,000, which was paid on the recommendation of the Commissioner of Indian Affairs, 'in lieu of all claims for past services for the Osage Nation,' if any payment was justifiable, is ample for the services alleged to have been rendered.

"Resolved, That in view of the foregoing the papers in the said claim be returned to the Department with the disapproval of this Board and with the earnest recommendation that no further payment be made thereon."

IV. That subsequently to the action of the Board of Indian Commissioners, to wit, on the 7th day of December, 1875, Hon. Z. Chandler, Secretary of the Interior, in considering the application of Vann and Adair for the further payment of \$180,000 on account of said contract, affirmed the action of his predecessor, and of the Board of Indian Commissioners, and declined to make any further payment, holding that the claim of Vann and Adair had no standing either legal or equitable.

That upon the 6th and 14th days of May, 1881, Hon. S. J. Kirkwood, Secretary of the Interior, having under consideration the above claim, also affirmed the action of his predecessors in the case, and refused to take further action.

V. That upon the 1st day of April, 1884, Hon. H. M. Teller, Secretary of the Interior, submitted to the Attorney-General the said claim of the petitioners for his opinion, and upon the 30th day of April, 1884, Hon. Benjamin Harris Brewster, Attorney-General, forwarded to the Secretary of the Interior his opinion, which was also adverse to the claim of said petitioners.

VI. That upon the 17th day of September, 1884, Hon. H. M. Teller, Secretary of the Interior, transmitted to this court, for their consideration and action, in accord-

ance with the provision of the act of the 3d of March, 1883, entitled "An act to afford relief to Congress and the Executive Departments," the papers from the files of the Department of the Interior in the matter of the claim of Vann and Adair "for a balance of \$180,000 for services alleged to have been rendered to the Great and Little Osage Nation of Indians as attorneys, etc., under a contract with said nation."

CONCLUSION OF LAW.

Upon the foregoing facts, and in view of the opinion of the court in the case of the State of Illinois v. The United States (20 C. Cls., R. P. 342), the court is of the opinion that the Secretary of the Interior has not authority to reopen the claim of said Vann and Adair.

ORDER.

The clerk will certify a copy of these findings of fact and conclusion of law to the honorable the Secretary of the Interior for his guidance and action.

BY THE COURT.

Filed December 12, 1887.

A true copy.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 14th day of December, A. D. 1887.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

EXHIBIT B.—Filed by Mr. Dial.

[In the Court of Claims of the United States. Vann and Adair v. The United States and the Osage Nation of Indians. Department, No. 19.]

DEFENDANTS' PRAYER FOR FINDINGS OF FACT AND BRIEF.

To the honorable the judges of said court:

The defendants, considering the facts hereinafter set forth to be proven, and deeming them to be material to the due presentation of the case in the findings of fact, request the court to find the same as follows:

I. That the claim of petitioners is for the payment of the sum of \$180,000 out of the Osage trust funds, which sum of \$180,000 is alleged to be still due the petitioners under an alleged contract entered into by and between C. N. Vann and William P. Adair and the Great and Little Osage Nation of Indians on the 8th day of February, 1873, and which contract purports to have been ratified in open council June 26, 1873, whereby the said Vann and Adair, for and in consideration of the sum of \$230,000 agreed to render to the said Indians certain services in preventing the confirmation of the treaty made with the said Indians on the 27th of May, 1868, for the sale of the Osage Reservation in the State of Kansas. (See Ev., p. 28.)

II. That this contract was submitted by the claimants to the Commissioner of Indian Affairs and the Secretary of the Interior in July, 1874, for their approval, and for the payment of the consideration named therein of \$230,000, or for so much as they may deem just and equitable in the premises (Ev., p. 2), upon which submission the Commissioner of Indian Affairs inclosed on said contract the words and figures following, to wit:

DEPARTMENT OF THE INTERIOR,
Indian Office, July 8, 1874.

Approved for \$50,000.

EDW'D P. SMITH.

(Ev., p. 17.)

The contract having been referred to the Secretary of the Interior it was returned to the Commissioner of Indian Affairs upon the 21st day of July, 1874, with the accompanying letter:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., July 21, 1874.

SIR: I return herewith, approved to the extent of \$50,000, the contract referred with your letter of the 8th instant between C. N. Vann and Wm. P. Adair and the Great and Little Osage Nation of Indians, entered into on the 8th day of February, 1873. The said sum to be in payment for services rendered by Vann and Adair as attorneys for said nation.

Very respectfully, your obedient servant,

B. R. COWEN,
Acting Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

Which said sum of \$50,000 was paid the said claimants.

(Ev., pp. 15, 19, 22.)

III. That on the 24th day of April, 1875, the Secretary of the Interior having referred the said claim of Vann and Adair for \$230,000 to the Board of Indian Commissioners for their action and an expression of their views, the said Board upon the 29th of July, 1875, at a regular meeting, adopted the following resolutions:

"Resolved, That the evidence presented in support of the said claim does not, in the judgment of this Board, establish its validity.

"Resolved, That the amount already allowed by the Department, to wit, \$50,000, which was paid on the recommendation of the Commissioner of Indian Affairs, 'in lieu of all claims for past services for the Osage Nation,' if any payment was justifiable, is ample for the services alleged to have been rendered.

"Resolved, That in view of the foregoing the papers in the said claim be returned to the Department with the disapproval of this Board and with the earnest recommendation that no further payment be made thereon."

(See Ev., pp. 16, 21.)

IV. That subsequently to the action of the Board of Indian Commissioners, to wit, on the 7th day of December, 1875, Hon. Z. Chandler, Secretary of the Interior, in considering the application of Vann and Adair for the further payment of \$180,000 on account of said contract, affirmed the action of his predecessor and of the Board of Indian Commissioners, and declined to make any further payment, holding that the claim of Vann and Adair had no standing either legal or equitable. (See Ev., pp. 19, 21.)

That upon the 6th and 14th days of May, 1881, Hon. S. J. Kirkwood, having under consideration the above claim, also affirmed the action of his predecessors in the case, and refused to take further action. (See Ev., pp. 22, 23.)

V. That upon the 1st day of April, 1884, Hon. H. M. Teller, Secretary of the Interior, submitted to the Attorney-General the said claim of the petitioners for his consideration and opinion, and upon the 30th day of April, 1884, Hon. Benjamin Harris Brewster, Attorney-General, forwarded to the Secretary of the Interior his opinion, which was also adverse to the claim of said petitioners. (See Ev., pp. 27, 28.)

VI. That upon the 17th day of September, 1884, Hon. H. M. Teller, Secretary of the Interior, transmitted to this court, under the provisions of the act of the 3d of March, 1883, entitled "An act to afford assistance and relief to Congress and the Executive Departments," the papers in the matter of the claim of the said Vann and Adair for the allowance of the said sum of \$180,000, heretofore mentioned. (Ev., p. 1.)

BRIEF.

A motion was filed by the defendants at the last term of this court to dismiss the claimants' petition for want of jurisdiction, which was overruled by the court without prejudice to the defendants to file a request for findings of fact.

A discussion of the merits of the case at this time we think unnecessary, as, under the decision of the court in the case of *The State of Illinois v. The United States* (reported in 20 C. Cls. R., 342) and the *Day* case (reported in 21 C. Cls. R., 262), the defendants consider that the plaintiffs have no standing in this court through the reference by Secretary Teller under the *Bowman* Act, the doctrine of *res judicata* being applicable to this case. (See *United States v. Bank of Metropolis*, 15 Pet., 401.)

This contract, on account of which claimants claim a balance is still due, has been construed and passed upon officially several times by the predecessors of Secretary Teller, the Attorney-General, and the Board of Indian Commissioners, and each time their claim under said contract and for which they are now contending has been uniformly disallowed. (See decision of Secretaries Chandler and Kirkwood, pp. 19, 22, and 23 of the evidence transmitted by the Department, wherein the case is fully passed upon. See also 20 C. Cls. R., 342, and the case of *Maury E. Day*, decided by this court at its last term, 21 C. Cls. R., 262.)

We submit that the decisions in the *Illinois* and *Day* cases are exactly in point, and therefore request that the court report the case back to the Secretary, with the foregoing findings of fact, together with its conclusions of law, that the Secretary of the Interior has no authority to reopen or reverse the decisions of his predecessors in the premises disallowing said claim.

ED. M. WATSON,
Assistant Attorney.

R. A. HOWARD,
Assistant Attorney-General.

SAMUEL J. CRAWFORD,
Attorney for Osage Nation.

WILLIAM T. S. CURTIS,
Of Counsel for Osage Nation.

STATEMENT OF J. B. TRUMBLY, MEMBER OF THE OSAGE TRIBE.

Mr. BURKE. Where do you live?

Mr. TRUMBLY. I live down at Pawhuska, Osage Nation.

Mr. BURKE. Are you a member of the Osage tribe?

Mr. TRUMBLY. Yes, sir.

Mr. BURKE. How long have you lived among them?

Mr. TRUMBLY. I have lived among them all my life.

Mr. BURKE. What, if anything, do you know pertaining to the alleged services of Messrs. Vann and Adair between the years 1868 and 1873; and state fully what you know about any contract that may have been made or any council that may have been had by the Indians touching this matter.

Mr. TRUMBLY. I don't know very much prior to 1873, but of course I have heard—

Mr. BURKE. We do not care about what you have heard, but only what you know of your own knowledge.

Mr. TRUMBLY. I was working then at the agency for the Government.

Mr. BURKE. In 1873?

Mr. TRUMBLY. In 1873.

Mr. BURKE. Tell us what happened, if you know, in 1873 with reference to Vann and Adair.

Mr. TRUMBLY. All I know is that Vann and Adair came there and tried to procure a contract from the Osages for services rendered in the breaking up of the Sturges treaty, and the majority of the people at that time was opposed to it—claimed that it was not a just claim—so there was a large protest. I remember well their having petitions around getting them signed from the people; that is, they were out there in open council in the camp. Vann and Adair were there, and Isaac T. Gibson at that time was Indian agent, and he ordered those people off the reservation.

Mr. BURKE. Did the Indians have a council at which they assembled and this matter was—

Mr. TRUMBLY (interrupting). They used to assemble in different camps, you know, they used to go to them in camps.

Mr. BURKE. I don't know that I understand just what you mean by going to camps. Did they go into the different parts of the reservation?

Mr. TRUMBLY. They would go to different groups of Indians; they would go to one camp and gather up a lot of Indians and then go to another.

Mr. BURKE. Did those Indians sign anything or did they pass any resolutions?

Mr. TRUMBLY. Well, I don't know whether they signed anything or not.

Mr. BURKE. Mr. Hemphill, do you desire to ask the witness any questions?

Mr. HEMPHILL. You don't know about this, personally, do you; it is just the tradition in the tribe, I suppose?

Mr. TRUMBLY. I was around right in the agency at the time.

Mr. HEMPHILL. You speak now about a majority of the people being opposed to it. That is just an opinion?

Mr. TRUMBLY. No; it ain't.

Mr. HEMPHILL. Did you take any census of it?

Mr. TRUMBLY. No.

Mr. NEALE. You said distinctly that you knew nothing about the original contract; you were not cognizant of the original contract.

Mr. BURKE. 1873 is the time he states—

Mr. TRUMBLY. Yes; 1873.

Mr. DIAL. You recollect the circumstances and the sentiment that prevailed at that time?

Mr. BURKE. We don't care about that. Have you anybody else that you want to have heard?

Mr. DIAL. No; I believe not. Here is Mr. Brown, but the statement that I have given you covers the proposition, I think.

STATEMENT OF HON. CHARLES CURTIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS.

Mr. CURTIS. Gentlemen, I do not like to appear before a subcommittee of the committee to which I belong, and I should not have attended these hearings except I have been requested to do so by Mr. Sherman.

A year ago, when an amendment was proposed in the Senate to pay this claim, from what I had heard of and read about it I thought there was some merit in it;

but it was for a large amount, and I knew there would be a great fight made on it on the floor of the House if we reported it. Therefore, I concluded to thoroughly look it up that I might have all the facts in connection with it before me in case we reported it, so that I could defend in conference our action. I secured the record from the Court of Claims, and after going over the case I became convinced that it was not a good claim and made up my mind that if it did go to conference I would oppose it. Fortunately for the conferees, however, the showing made in the Senate was such that it was voted down—

Mr. NEALE. I beg your pardon, but that is not exactly correct; no vote was taken on it there and it was withdrawn at 2 o'clock in the morning, because of lack of time.

Mr. CURTIS. I thank you for the correction.

Mr. HEMPHILL. You are one of the judges in this now. Do you want to commit yourself now?

Mr. CURTIS. I want to tell these gentlemen how I feel about it. If they don't want to hear me—

Mr. Hogg. I do not care so much about your feelings as I do for what you know about it.

Mr. HEMPHILL. The point I make is that we expect to satisfy his judgment that we are correct and so we do not want him to commit himself.

Mr. CURTIS. We might as well settle that now. My mind is made up and I fear you would have a hard time to convince me that this claim has merit. Undoubtedly a great work was done for the Osage tribe of Indians. If Vann and Adair did the work and are entitled to all the credit, they ought to be paid what those services are worth. When the matter was up before I had a notion to suggest, if it had gone to conference, that in order that this matter might be settled and no injustice done the Osages or to the heirs of Vann and Adair that the case should go to the Court of Claims for full and free hearings on all the evidence and let that tribunal determine what was fair and just under all the circumstances and make a finding of facts. Now, if you will permit me, I will give you the reasons why I have made up my mind against this bill. I was influenced largely by the deposition of Mr. Gibson, who was the agent, and I think it would be well to read it.

Mr. Curtis read as follows:

"Mr. Gibson swore as follows:

"The ratification of said treaty was prevented, first, by Senator Morrill, of Maine, and other Senators, who believed a great fraud had been perpetrated on the Osages in obtaining such valuable lands at so small a rate—about 18 cents per acre. Senator Morrill so expressed himself to me; second, four or five railroad companies in Kansas insisted on having a share or a part of these lands and had a proposed treaty offered in the Senate to that effect; third, the governor and other State officers of Kansas joined in a strong and well-grounded protest against the ratification of said treaty, a copy of said protest being sent to the President of the Senate, and one copy to the chairman of the Indian Senate Committee, and one copy to the President of the United States. My connection with the affairs of the Osages led me to an investigation of these matters, with the above findings.

"For these principal reasons, Mr. Sturgis, the author of the treaty, found it impossible to induce the Senate to ratify said treaty, but the President did not withdraw said treaty until he had consulted the Osages, through Superintendent Hoag and myself in a council held with said Indians at the time I took charge of them, about October 1, 1869. The Indians related to us how they had been deceived and drawn into signing the treaty and requested us to ask the President to cancel said treaty. Superintendent Hoag sent an account of our investigation to the President, accompanied with the demand of the Osages for the immediate revocation of said treaty, whereupon the President withdrew it from the Senate, with which the Osages were much pleased.

"Are you, or were you during their lifetime, personally acquainted with one C. N. Vann and one W. P. Adair, members of the Cherokee Nation?

"I was personally acquainted with both of them.

"State, if you know, what these gentlemen had to do with the defeat or withdrawal from the Senate of the so-called 'Sturgis treaty.'

"I know that Vann and Adair had no authority from the Osage tribe to oppose or defeat said treaty; but at the general council of the Osages, in August, 1870, I heard C. N. Vann say to some Osages that they (Vann and Adair) did render some assistance in defeating said treaty, but that they (Vann and Adair) did not charge anything for what they had done, as they were Indians, and Indians did not charge one another for such services. Beyond this I have no knowledge of their doing anything in effecting the withdrawal of said treaty.

"Do you know anything of a contract, or pretended contract, which the said Vann and Adair had, or claimed to have, with the Osage tribe or nation for services alleged to have been performed by them in connection with the said Sturgis treaty? And if so, state all you know about it; how the contract was obtained; what was done by the parties; the representations made to the Indians; the inducements held out to them, and in brief all you know about the matter.

"I do know of a contract, or pretended contract, between Vann and Adair and said Indians. The bill passed by Congress in July of that year providing for the sale of the Osage Kansas lands at \$1.25 per acre was submitted to the Osages at a council on Drum Creek, on their reservation, for their acceptance in August or September, 1870. I invited the Cherokee delegation to be present for the purpose of negotiating with the Osages, and selling them a reservation out of Cherokee lands in Indian Territory, for a new home.

"C. N. Vann was present on behalf of the delegation, and I heard him say to Governor Joseph and other Osages that the Cherokee delegation had assisted their agent (myself) what they could in breaking the Sturgis treaty and selling their lands at \$1.25 per acre; but the delegation did it freely, making no charge and expecting no pay but the continued friendship of the Osages; though they had a paper, he said, from some of the Osages requesting assistance and providing for fees, yet they would make no charge, being glad to render them a service; also that the paper referred to was in his (Vann's) saddlebags; it had not been recorded at Washington, as required by law, and was of no account, and he would hand it to Governor Joseph and they might destroy it. This was my first knowledge of anything purporting to be a contract between Vann and Adair and the Osages. Governor Joseph afterwards informed me that said Vann gave him the paper alluded to and he tore it up.

"Upon inquiry of Governor Joseph and other Osages at this time, I learned that soon after the close of the Drum Creek council, in the fall of 1869, four or five of the leading men of the Black Dog's and Big Chief's band, who, without the authority or even knowledge of the agent (myself) or of the tribe, visited the Cherokees at their capital (Tahlequah) to talk about the selection of a new home for the Osages on the Cherokee lands; that they met Vann and Adair, who were then Cherokee delegates to Washington. They then induced these Osages to sign a paper employing them (Vann and Adair) to oppose the Sturgis treaty and sell their lands at a higher price, this being the origin of the paper that was torn up by the governor, as above referred to.

"In June, I believe, 1873, some of the Osages informed me that Vann and Adair were in the Osage camps trying to induce their chiefs to sign a paper. This not being in accordance with the custom and rules of the Osages I spoke to some of the chiefs about it, and told them to sign no papers in their camps and to tell these men to come to the agency and show me their papers. Vann and Adair declined to come to the agency, spending about two weeks in a remote part of the reservation, counseling and corrupting the Osages, as I was informed by different members of the tribe.

"An annuity payment occurred at this time. The Osages came to the agency, Vann and Adair coming in with them. Not appearing at the office, I went out to the camps near the agency and found them; asking them their business with the Osages. They refused to tell me, saying they were Indians, and had a right to visit among the Osages. I asked to see the paper they were trying, I heard, to induce the Osages to sign, which they refused to show me, saying it was none of my business, and in a threatening manner said if I would let them alone they would let me alone. I ordered them to leave the reservation, to which they gave no heed. I then sent an intelligent and reliable half-breed to watch their proceedings and learn the contents of said paper, who reported to me that it purported to be a claim for services alleged to have been rendered by said Vann and Adair for breaking the Sturgis treaty and selling the Osage Kansas lands at \$1.25 per acre, for which service they wanted the Osages to pay them \$330,000 by an order on the Osage fund in Washington.

"I then went again to see Vann and Adair in the camps, warning them to depart; told them their claim was groundless, according to their own statements about three years before, when they had told the Osages they had done nothing worth charging for. They, Vann and Adair, answered me by saying the money claimed from the Osages was not for themselves, but for my friends. I then spoke to most of the chiefs, and told them the claim was a fraud, and that they must not be deceived by those lying fellows, who came in the guise of Indians to rob them of a large sum of money. My half-breed detective soon after this saw Vann and Adair with a few Indians and half-breeds, having the names of chiefs and head men written, and their marks being made as signers to said paper, who were not present, and most of whom

afterwards assured me they had constantly refused to sign said papers. Vann and Adair having, as they thought, perfected their papers as above described, though none of the names of the chiefs or head men of the Little Osages had been attached thereto, took their departure, volunteering to send me a copy of said paper by and by.

"Very soon after Vann and Adair left the agency, the Osages, generally, showed great indignation against the few leading Indians and three half-breeds who had assisted Vann and Adair in procuring the names to said paper, and were anxious to protest against the payment of the sums claimed, or any part thereof, which protest was drawn up and almost unanimously signed by the chiefs and leading men and heads of families of both the Great and Little Osage tribes, which composed the Osage Nation. Said protest was sent to the Commissioner of Indian Affairs at Washington.

"Right here, permit me to state that the Osage Nation is composed of two distinct tribes of Indians, namely, the Great and Little Osages. No council or treaty is regarded as legal or binding on the nation unless both tribes are represented therein by the signatures of their principal chiefs and men obtained in general council.

"The copy of the pretended contract afterwards given me by C. N. Vann did not have the names of any chief or head man of the Little Osages, Nopawalla being the chief, Strike Axe being second chief, and Chetopa counselor. Admitting that all the names signed thereto were genuine, the so-called contract could not be of any binding or legal force whatever on the tribe, for the reason stated. The name of a Little Osage, though not a chief, appears on said paper as 'Little Chief,' and is given the title of chief of Little Osages, such title being false and made for the occasion, as Little Chief was never before thought of as chief of the Little Osages.

"This statement can be verified by referring to the annuity pay rolls of the Osages of that period; and, further, the indorsement on said paper by Governor Joseph Pa Ne No Poh She was also a forgery, as he positively assured me that he did not indorse said paper, he being a scholar and always signed his own name to documents when it was proper to be done. Soon after sending the protest to Washington, C. N. Vann came to the agency and to my office, and, in a very friendly and persuasive manner, tried to discourage me from allowing myself to be used by the Osages in opposing the payment of their alleged claim, saying that he and Adair would get but a small part of the sum; that Colonel Phillips, of Kansas, would get the most of it, and if I would step aside now with him he would tell me of other names of my friends who were interested, which I indignantly refused to do, believing that he desired to make some corrupt proposition to me, telling him that I recognized no man as a friend of mine who would seek to rob my Indians.

"He, Vann, handed me what purported to be a copy of the pretended contract which he and Adair had manufactured; then he left the agency. Recurring to the signing of the protest by the Osages, I now learned from them that Vann and Adair had visited, in February of this year—1873—the Black Dog's and Big Chief's band, who were located in a remote corner of the reservation, and induced them by corrupt means—as I was informed by their Indian friends—three or four of these Osages to sign a paper with a view of reviving that one torn up by Governor Joseph. This second paper stated that the value of services rendered by Vann and Adair to the Osages were \$350,000, or a much greater amount; but they (Vann and Adair) would be willing to take the amount stated.

"Upon this paper for his authority, signed in a camp by ordinary, unlettered Indians, without position in the tribe, without the knowledge of the agent or the leading men of the tribe, without the presence of the United States interpreter or any Osage interpreter to translate the papers, the honorable Acting Secretary of the Interior, V. R. Cowen, on the 21st day of July, 1874, authorized the payment to said Vann and Adair of \$50,000 of Osage funds, which occasioned great consternation and indignation in the tribe, reducing their annuity payment and greatly deranging the plan of work at the agency for the promotion of civilization among the Osages, for which purpose this money was appropriated by Congress.

"In a short time after they (Vann and Adair) received this \$50,000 W. P. Adair came to a remote corner of the reservation, sending out runners, calling a private meeting of the Osages to whom he had promised money, and who had signed the fraudulent contract; had a beef killed at his expense and fed them; related to them of the payment of the \$50,000; how he had paid out nearly all of it to Washington men; had brought them (these Osages) the balance, and now if they would sign another paper asking for the payment of the remainder, \$180,000, he would get it, and they should have the most of it.

"Adair having brought a judge of the Cherokee Nation to witness and certify to the persons present, perfected his paper by attaching a large number of names of the leading men of the tribe who were not present, and had no knowledge of the meeting, as they afterwards informed me, I having obtained a copy of the paper and

signatures. This meeting was in no sense a council of the Osage Nation, the agent, the United States interpreter, the governor of the nation, the principal chiefs of the two tribes (Great and Little Osages), and their counsellors, all of these being absent. The meeting was not called by any official authority of the tribe; made as secret as possible; having no semblance or shadow of a genuine or legal council.

"Recurring to the second paper, purporting to be a contract for the payment of \$330,000, made and signed by Osages without any authority from the tribe, it was reduced to \$230,000 in the following manner, as I was informed by the interpreter who acted on the occasion: Adair, with those Osages who had signed the paper, visited the various bands of Indians on the reservation, except the Little Osages, to induce them to sign the paper. Failing in this they reduced the claim from \$330,000 to \$230,000, promising to several leading men various amounts, to be paid when the money was received at Washington. Vann and Adair promised to each of the following Osages \$10,000: Governor Joseph, Hard Rope, and Wa ti an ka; and to Chetopa, counselor for the Little Osages, they offered the same amount if he would sign the paper, but he refused to do so. This he told me himself."

Mr. CURTIS (continuing). That was the deposition used in the Court of Claims.

Mr. BURKE. Do you remember what year?

Mr. CURTIS. No; I do not remember the year. Now, I find in this Document, No. 29, Senate—

Mr. BURKE. What Congress?

Mr. CURTIS. The Forty-third Congress.

Mr. HOGG. Was that deposition controverted there?

Mr. CURTIS. No; not that I could find. The contract as given on page 23 is signed by this man Joseph, by his mark, which he afterwards said he did not sign. It is witnessed by 65 people. It was witnessed by Charles Rogers, district judge of the Coowescoowe district of the Cherokee Nation, a Cherokee judge taken by these Cherokee claimants. It is witnessed by 65 of the council who, they claim, represented this great council, and it is witnessed by 45 other Indians; and following that is a protest of 19 who signed that paper, stating that they did it under a misapprehension of the facts—did not know what they were doing; and here is an affidavit of Tinker, dated the 27th day of August, 1873, in which he says:

"I was present at the time of counseling when Colonels Vann and Adair were having the petition signed by Osage chiefs and others for the purpose of having the Government of the United States pay them \$230,000 out of the Osage funds for alleged services. During the signing of said petition not to exceed one-half of those whose names are affixed were present at the time, but their names and marks were affixed without their presence, consent, or knowledge.

"WILLIAM H. TINKER."

As I said a moment ago, the principal chief's name is signed by his mark when as a matter of fact he could sign his own name. Following that is a protest signed by 214 members of the tribe.

Mr. BURKE. These heads of families?

Mr. CURTIS. Yes; and heads of bands of Indians. Here, among other things, is what they say.

Mr. BURKE. What is the date of that?

Mr. CURTIS. July or August, 1873.

"His Excellency U. S. GRANT, President:

"The undersigned, the governor, chiefs, and headmen, in part, of the Great and Little Osage tribe of Indians, respectfully ask of you a consideration of the following statement of facts, and that you will interpose your strong arm to prevent the consummation of a great wrong to them and to their children.

"In the year 1868 certain railroad parties made a contract with the Osages—or a part of them—for the purchase of their lands in Kansas at an almost nominal price. By what means such a contract or seeming contract was obtained it is unnecessary now to recite; but realizing how homeless and destitute it would make us, we anxiously desired that the contract might be rejected by the Government.

"While knowing that we ourselves were powerless and yet in extreme need of help, some able and distinguished Cherokees presented themselves—Colonel Adair, Colonel Vann, Boudinot, and others. They were to us great men, having almost unlimited power at Washington. We made an agreement that if, through them, the railroad contract was rejected by the United States Senate they might sell our lands and have one-half of the excess over the railroad price for their services.

"The contract with the railroad was rejected, but our agent and superintendent told us 'that the Cherokees named above had no influence in the matter;' that our

Great Father and the Senate needed no prompting to do so just an act. In fact, at the time of the treaty, in 1870, when our lands were ceded, Colonel Vann handed the contract to our governor, saying, 'they had rendered no service and made no charge.' It was taken by the governor and torn up.

"And now, in this year, in February, 1873, come Colonel Vann and Colonel Adair, and at a remote point on our reservation—on Bird Creek—have a council with a part of the tribe, not a chief, councilor, or a headman of the Little Osages, nor leading half-breed, being present.

"The methods employed by these Cherokees at this secret council to obtain something like a resurrection of their former contract are known to us. They have been used at the gathering of the tribe, just over, to secure an apparent ratification of the nefarious Bird Creek transaction, and to our great injury in other matters as well.

"These men presented themselves as of our own race, having for us a warm love and a deep interest in our prosperity. This, with the knowledge that they were educated and able men, gave them great influence with our people.

"We have had serious trouble with the Wichita Indians recently, growing out of a crime committed by some of our young men, deplored and condemned by the whole tribe. The agent of the Wichitas and our agent and superintendent wished us to surrender the guilty parties to the Government authorities. But our friends, Colonel Vann and Colonel Adair, claiming entire knowledge, told us that there was no law for such surrender, and that it was gratuitous interference on the part of the agents to ask it.' If in this matter we seemed to disregard the wishes of the Government let the responsibility rest where it belongs. But their zealous championship in this trouble added to their claims upon us.

"In the meantime they plied us by every means, day and night, to obtain the ratification they were seeking; council after council was called by them; our own business was neglected and run into confusion; payment was delayed nearly two weeks, until restless and worn out by their importunities, and not realizing the magnitude of the fraud, some of our people signed, as they say, solely to get rid of them; others were wrought upon differently. The Cherokees represented that they had promised large sums to leading men at Washington; that they had shown their contract with the Osages to convince these men of their ability to pay such sums; that it was solely by that means that they had prevented the ratification of the railroad contract; that it would be bad faith to the distinguished men at Washington, Senators and others, to repudiate; and, further, that they had promised almost the entire amount; very little would be left to themselves.

"Some of us therefore signed the ratification out of gratitude to our zealous and unselfish friends to save them from the odium of broken promise made in our behalf. Others were made to believe that these Cherokees could go to law and recover nearly one-half of our entire north [worth?], present and prospective, but that they, out of the love they bore us, would generously accept the pittance of \$230,000 and relieve us from fear of confiscation and poverty. Add to these names on the paper without the knowledge or consent of their owners and you have briefly the facts in the case.

"We desire to pay these friends of ours liberally for all service they rendered us. But now we, representing by right the whole of the Little Osages and in part every band of the great and the leading half-breeds, do enter this our most solemn protest against the recognition or consummation of this monstrous fraud that is being attempted upon us. And in the name of justice and by our hopes of seeing our children grow into civilized and educated citizens we appeal to you, our Great Father, to protect us from the machinations of able and unscrupulous men who are seeking to devour us."

That is signed by 214 members of the tribe.

Mr. Hogg. Have you any knowledge as to who prepared that protest?

Mr. Curtis. I suppose their agent or some man sent by the Government.

Now, gentlemen, this contract was brought to Washington and filed by Colonel Adair with a letter, as shown in their brief, containing these words:

"Early in July, 1874, Vann and Adair submitted said written contract to the Secretary of the Interior and Commissioner of Indian Affairs for approval and payment of the whole amount thereof, or for so much as they may deem just and equitable in the premises."

That was the letter from Vann and Adair to the Commissioner. The Commissioner recommended its approval for \$50,000 in payment for all past claims and services rendered by these gentlemen to the Osage tribe of Indians. The appropriation was afterwards made, and there was some question raised as to the right to pay the amount of \$50,000 out of that appropriation, but the Commissioner of Indian Affairs said that while he was doubtful, yet he recommended that the amount be

paid. The money was not much more than paid when these gentlemen began to make an effort to get the other \$180,000. They filed their application with the Secretary of the Interior, and it was referred to the Board of Indian Commissioners, and that Board made the following finding:

"Resolved, That the evidence presented in support of the said claim does not, in the judgment of this board, establish its validity.

"Resolved, That the amount already allowed by the Department, to wit, \$50,000, which was paid on the recommendation of the Commissioner of Indian Affairs, 'in lieu of all claims for past services for the Osage Nation,' if any payment was justifiable, is ample for the services alleged to have been rendered.

"Resolved, That in view of the foregoing the papers in the said claim be returned to the Department with the disapproval of this board and with the earnest recommendation that no further payment be made thereon."

There is no use of my taking up further time. The claim was presented to various Secretaries, and all of them refused to reopen it or to take it up until it came to Secretary Teller, and he referred it to the Department of Justice for an opinion, which he received. That opinion, I think, was, as stated this morning, simply that one Secretary had no right to open the question after it had been decided by a former Secretary. That is my recollection of it. Then Mr. Teller submitted this question to the Court of Claims for finding, and the court found that one Secretary has no right to open up a case decided by a former Secretary.

I have always believed that the great State of Kansas had more to do with the withdrawal of that treaty than any person, or that the officers of the State had more influence than any other persons who took an interest in it. A protest was signed by every State officer and sent to the President, and a showing was made by the members of the Senate and House from the State of Kansas and the treaty was withdrawn. Now, the counsel said a minute ago, reflecting upon the statements that might have been made by Mr. Clark, that his suggestions should be given but little consideration, because he tried to put these Indians off with a million dollars instead of giving them the full amount.

The same question was raised in that Congress that is often raised in Congress and in committees now. The question was as to the extent of the title of the Osages, and in reading the proceedings, instead of finding that they tried to cheat the Osages out of any money, it was simply a question of how much they were entitled to for the right of occupancy they had, some claiming that whenever they gave up the land they were simply entitled to a small consideration and others contending that they were entitled to full pay. My service on this committee justifies me in saying that question has been up frequently, and in the Wichita case I insisted that they should have \$1.25 an acre.

I do not want to do any injustice to these people. I have made this statement so that these gentlemen may reply to anything that I have said. I have not had time to go over the papers, but from the examination made I have reached the conclusion, and I still say that rather than do any injustice to these people—while my mind is made up fully that Vann and Adair have no legal claim—I say that it would be only fair to allow them to make a showing in the Court of Claims, and let that court submit its findings of fact to the House.

Mr. BURKE. Would you be willing to go to that extent?

Mr. CURTIS. That is my present feeling about it. Of course, as a conferee, I probably would not be justified in saying that I would even consent to that, but that is my present feeling.

Mr. BURKE. That is as far as you would go?

Mr. CURTIS. Yes; as far as I feel I should go.

Mr. HOGG. That matter you referred to in this letter of Vann and Adair—

Mr. CURTIS. That is taken from their own brief.

Mr. HOGG. For approval and payment of the whole amount thereof, or for so much as they may deem just and equitable in the premises.

STATEMENT OF HON. JOHN J. HEMPHILL.

Mr. HEMPHILL. Gentlemen, if I understand what is in the mind of the committee—and I will try to confine myself to that—both from what you stated this morning, Mr. Chairman, and the points raised by Mr. Curtis, the question is whether there was a meeting of the council at which this contract was made of 1873. There is no pretense upon the part of anybody but that the Drum Creek treaty was made by the Indians for the benefit of the railroads and that it was most unfortunate for the Indians; everybody concedes that. There is no question that Vann and Adair were

employed then as attorneys. The only question raised by Mr. Gibson's statement is whether they went there and were employed or whether they were sent for by the Osages and employed, and that does not seem to me to be very material one way or the other.

There is no question that those gentlemen came to Washington and that they rendered service. What their services were worth is a question we will come to directly. There is no question that they surrendered the original contract, and that they made a new contract with these Indians in February, 1873. That contract, it is said, was signed by the chief by a mark, instead of in his own handwriting. I have here, from the record of the Court of Claims, a copy of an affidavit, which states the delegation that made this contract consisted of Joseph Pawne no pah she, the governor of the Osages; Black Dog, Wah ti in kah, Chee su hun kah, and Major Broke Arm. The governor was not present, on account of sickness, but there is his name to be seen, and afterwards he acknowledged it.

But in order to set all doubts at rest and do everything lawfully and honestly and with a good understanding between the parties interested, it was agreed that this new contract between Vann and Adair and the Osages should be presented to the Osage council for its action thereon. This new contract called for \$330,000, whereas the original contract called for about \$4,200,000. The first council that was called after this new contract was made was called by the agent, J. T. Gibson (the man that makes this affidavit), at the Osage Agency in June, 1873, and a full council was present.

[Reading from some paper:]

"Our governor and chief men sent a commissioner to the Cherokee Nation for the attorneys of the Osages, Adair and Vann, to be present at the council, and they came by our invitation. The Osages were in trouble concerning their war," etc. I need not go into that.

Mr. BURKE. Who makes that affidavit?

Mr. HEMPHILL. Governor Joseph Pawne no pah she and other leading Osages. (Mr. Hemphill named a number of Indians.)

Mr. BURKE. When was that made?

Mr. HEMPHILL. That was made the 11th of August, 1875, and is set forth at length. I can put so much of it in the record as may be necessary to explain it to the committee. It sets forth at length that this council was called, that they sent for these attorneys, that they made this contract with them, that they knew what they were doing, and that it was just as legal and regular as any contract that was ever made between two individuals.

Mr. BURKE. Is that the affidavit or a copy of the affidavit?

Mr. HEMPHILL. Yes, sir; originals, and these papers I am reading from are the papers which I borrowed from the records of the Court of Claims for the benefit of the committee.

Mr. BURKE. Were these two gentlemen, Adair and Vann, lawyers?

Mr. HEMPHILL. Oh, yes; they were lawyers, and while I do not know much about Vann, I know that Colonel Adair has the reputation of being a man of ability and standing in every way, an able and reputable man.

Mr. BURKE. When did they die?

Mr. HEMPHILL. Colonel Adair died in 1880, and I think Colonel Vann died about the same time.

Mr. BURKE. Was that before this case was in the Court of Claims?

Mr. HEMPHILL. Yes; before it was in the Court of Claims.

Mr. CURTIS. It did not get to the Court of Claims until 1884.

Mr. HEMPHILL. I do not think it did. They pressed it and then their widows took it up, and now at least one of their widows is dead and their grandchildren are trying to get this money. In that letter from Enoch Hoag, Superintendent of Indian Affairs, fifth month, 20th day, 1875, directed to the secretary of the Board of Indian Commissioners, is this question and answer:

"Question. Was the alleged contract, or amended contract, between Adair and others and Osage chiefs, out of which the claim grows, made at a council regularly convened, at which your office or that of the agent was officially represented?"

"Answer. Such council was held, and this office represented by Mr. Beede, chief clerk."

Now, there is the positive statement of the Superintendent of Indian Affairs that this was a council and that the Government was represented by the regular Indian agent. In addition to that on February 12, 1875, Hon. E. P. Smith, Commissioner of Indian Affairs, reporting on this case to the Secretary of the Interior, said:

"Respecting the intelligent assent of the Osages to this contract, I have to say that many of the leading men of this nation, including the governor, have a fair educa-

tion, and that at the time during which this contract of February 8, 1873, was under consideration the agent of the tribe and the chief clerk of the central superintendency were present and fully presented to the Indians the effect of the contract which they were signing, showing them, by comparison with the moneys which they were accustomed to receive annually in cash, how many years would be required to aggregate the sum which they were contracting to give these attorneys.

"I am satisfied if any Indians can be made, by any process of demonstration, to understand a pecuniary transaction these Osages knew what they were doing."

Mr. CURTIS. He is the officer who recommended that it be approved for \$50,000, is he not?

Mr. HEMPHILL. Yes.

On July 5, 1874, Mr. Smith, Commissioner of Indian Affairs, reporting to the Secretary of the Interior on this case, said: "The second agreement, that of February 8, 1873, declares that whereas the attorneys have performed well their duties in the premises, and have done all they contracted to do, and have procured for the Osage Nation a sum aggregating several million dollars, and whereas such sum is greater than was the expectation of either contracting party, the attorneys willingly propose a reduction of their stipulated contingent fee, and agree to take in lieu of said fee the sum of \$330,000."

Now, in addition to that, Mr. McCammon, who is a gentleman above reproach and I think as honest a man as ever lived, after investigating this whole question from start to finish under his responsibility of Assistant Attorney-General made his report to Secretary Teller in these words:

"The agreement of February 8, 1873, confirmed June 26, 1873, was a valid instrument and settlement for such services and free from fraud and extortion, and was fully understood and intelligently assented to by the Osages."

Mr. HOGG. What about the approval of the Department?

Mr. HEMPHILL. I will come to that in a moment. I wanted to put this in in regular order. These Osages in 1874 sent a document—I mean the chief of the nation and his leading men sent a document—after the \$50,000 had been paid, saying:

"We have learned with great pleasure that you have received and registered according to law the contract that the Osage people made sometime since with C. N. Vann and W. P. Adair, of the Cherokee Nation, for legal services rendered by them as attorneys for the Osages before the Government of the United States, and which was approved by the national council of the Osage Nation in 1873 for \$230,000. Our nation made this contract in good faith and we desire it carried out in good faith for the amount it calls for on its face."

That was December 14, 1874, and the money was paid in July, 1874. This was signed by the governor of the Osage Nation and by 28 chiefs and councilors of the nation.

Again in 1877 the governor of the Osage Nation and the six men then constituting the business committee, who had been made a business committee by the Indian agent, executed a regular petition addressed to the President of the United States, their signatures being witnessed by Paul Aken, a United States interpreter, and a certificate attached thereto as follows:

INDIAN TERRITORY, OSAJE AGENCY, *May 21, 1877.*

The foregoing document was in my presence read to the governor and business committee, and signed in my presence after being interpreted.

CYRUS BEEDE, *United States Indian Agent.*

In that petition they set forth:

"Had we not employed our attorneys no one could have known that the treaty of 1868 was unjust and it would have been confirmed; but our attorneys did show to the Great Father and others that it was unjust and it was rejected, and we have therefore had justice. We know that we could not have had justice but for these attorneys, and we know that they were our only friends when the Government agents had joined our enemies to rob us of our lands.

"After our attorneys had the law passed giving us \$10,000,000 for our lands they brought back the contract for their pay and said that it would give them more money than they wanted to take from us and giving it to our governor said that they wanted to arrange with us for reasonable pay for the work they had done. A number of our leading men were appointed to agree with our attorneys, and they arranged a settlement by which our attorneys were to have \$330,000 for their services in place of \$4,200,000, to which they would have been entitled under the contract which they had surrendered to our governor. This settlement was subsequently submitted to a regular meeting of our national council and was fully explained to the council by the

United States interpreter, by the United States agent, and by the chief clerk of Superintendent Hoag, and after a full discussion and consideration of the whole business, and after the settlement had been before the council more than a week, it was approved by a resolution which requested the United States to pay the attorneys \$230,000 named in the settlement."

There were three Government officers at that meeting explaining that proposition to these people, and the Commissioner of Indian Affairs reports that if any people on earth ever understood a proposition or could be made to understand a proposition, that these people knew what they were doing.

In addition to that I have the original petition of these Indians. The first is signed in 1877, and it is directed to His Excellency Rutherford B. Hayes, in which these Indians petition that this honest debt that they owe to these attorneys should be paid. Whether the original contract was signed by the governor in his own handwriting or not, this certainly is. There is Joseph Pawnee, so and so, and there is a gentleman in the room that knows his signature and says that that is the original.

There was some question about Strike Ax having signed his own name. This petition is signed by the governor, by Strike Ax, by Big Chief, Hard Rope, Black Dog, and W. K. Connor, constituting the business committee, and the witness to it is Paul Aken, a United States interpreter of the United States Osage Indian Agency, Ind. T., who, on the 21st of May, 1877, certifies "the foregoing document was in my presence read to the governor and business committee and signed in my presence." He states that. That was followed by another petition in August, 1880, and that is signed also by Joseph, the governor of the Osage Nation, in his own handwriting, by Strike Ax and others. It is certified to by A. N. Ryder, judge of the Coowescowe district, Cherokee Nation. This is a petition to the President of the United States by the governor of the Osage Nation and the chief councilors and business committee, asking him to pay this debt.

MR. BURKE. What is the date?

MR. HEMPHILL. The first I read was dated 1877; the last one in 1880. They set forth in that paper that all this talk about the contract being illegal is not true.

MR. NEALE. This was several years after Mr. Gibson's testimony?

MR. HEMPHILL. Yes; several years afterwards.

MR. CURTIS. This same Paul Aken signs the protest as interpreter?

MR. HEMPHILL. Yes.

MR. CURTIS. Signs it as United States interpreter.

MR. HEMPHILL. So it seems to me if anything can be considered to be settled among the Indians of that country it is the fact that while the governor may not have signed the original contract in his own handwriting he has certainly signed the two petitions to the President of the United States asking that money be paid to them and has acknowledged his signature. And in addition to that the records show that he did acknowledge the approval of his contract at a subsequent time when all the Indians signed their names to it.

That is followed by the action of the council in 1893, in which they again repeat that they owe this money and want it paid, and the only condition they put to it is that it shall be paid out of the interest instead of the principal sum.

Now, as to the payment of \$50,000, whether that is in part or in full, we have this to say on the subject. We all know that an obligation to pay \$250,000 can not be settled by the payment of \$50,000 unless there is some compromise or arrangement by which that is taken in full payment. If a man owes me \$100, he does not settle it by paying \$50 and indorsing on the back that it is settled in full or indorsing that on any paper he chooses to put it on. And that is all, as I understand that has been done by the Government in this case. But upon that subject we have the sworn statement of the gentlemen who received it that they did not receive it and would not have received it in full.

Then we have on the other side of the question the statement of Mr. Clum, and I have his affidavit in full here. I am reading now from the report of the Secretary of the Interior. He says that Adair stated to him that he should not receive said sum in full satisfaction, and would not receive it all if it debarred him from any further claim. Mr. White testifies—he was in charge of the division of Indian Affairs—that he remembers that Colonel Adair strenuously protested against the action of the Commissioner and declined to accept the proposed settlement in full satisfaction of the claim of Vann and Adair.

Then it goes on to say that the claim was further opened for further hearing and adjustment by the Department. That action was taken October 8, 1875. The payment was made in July, 1874, and October 8, 1875, Mr. Cowan said. The Secretary of the Interior and the Commissioner of Indian Affairs afterwards freely opened the case and allowed the said Vann and Adair to give further proof as to the value and

extent of their services, which has been done; so if there had been a settlement in 1874 the authorities of the Government themselves have put upon record that they have opened this case again to receive proof of further services of Vann and Adair.

Mr. HOGG. In that connection it would not seem reasonable to me that they would be willing to go and be heard, having the matter reopened, if they were relying solely on their contract.

Mr. HEMPHILL. Of course, when you are dealing with the Interior Department you go there and make your argument, and what action they may take after that you can not control at all.

Mr. HOGG. But it seemed to be opened for a specific purpose.

Mr. HEMPHILL. That is to get further proof as to the value and extent of their services, which has been done, he said. Now, that may not have been technically and legally the proper thing to do, but we all know when you are in the hands of the Secretary of the Interior you will take what you can get. So far as the Court of Claims is concerned, the case was referred to the Court of Claims.

Mr. HOGG. They did not decide anything?

Mr. HEMPHILL. No, sir; that is the fact. I will put in here just what was stated. The counsel in the case, the attorneys of record, stipulated "that this case be submitted to the court without argument, all request for findings of facts being waived except the finding that the claim has been decided by a prior Secretary of the Interior and that the present Secretary has no power to take action in the case."

And the court did decide as follows:

"Upon the foregoing facts and in view of the opinion of the court in the case of *Illinois v. The United States*, the court is of the opinion that the Secretary of the Interior has not authority to reopen the claim of said Vann and Adair."

That was all that was decided by the Court of Claims, and there was no argument made on the case. They decided that on the strength of a previous decision.

Now, the opposition to the payment of this debt arises in this way: Mr. Gibson was the Indian agent down there for a time, and he conceived for some reason or other an intense objection to Vann and Adair and to their claim. I have here the statement as to a number of things stated by Gibson, testified to by the governor and by the business committee, and in that they state:

"We can state that the paper which Gibson presented here, signed by 200 people, was gotten by our late agent, Isaac T. Gibson; that he had ever an insane desire to disburse all our money himself; that he ever opposed any and all claims against us, however just, unless they had been created by himself; that he seemed to regard it as a personal injury that any part of the money should be paid out without going through his hands; that he drew up this paper, and that it is false in every allegation, and that the signatures were obtained by a false interpretation of its contents and other means equally dishonorable."

It goes on to say that the council, referred to as a secret meeting of individuals, was a regular meeting at which all the chiefs and councilors were present, with one exception, naming that chief, and that the council waited two days for him, and that he got as far as the agency and was stopped there by the Indian agent.

The fact is that that protest, not only from this statement, but from other information I have, was procured by Gibson himself as agent in an active canvass of all those people, and out of the 200-and-odd persons who signed this protest there are 25 of them that signed their names and all the others signed by marks.

Mr. BRKE. Does not that statement you have just read in some respects corroborate the statement of Gibson that he did oppose it and ordered them off the reservation? You read an affidavit, I think, that Gibson was present with an interpreter and the chief clerk of this man Hoag?

Mr. HEMPHILL. I don't know whether he was present, I don't know whether he was the Indian agent at that time; but the Indian agent was present and he may have been the man.

It seems to me that the Indian Office here, with all of its facilities for ascertaining the truth, would have hardly said that this was a regular council and that these people knew perfectly well what they were doing unless it was true, and they would not have approved this contract for anything unless it had been a proper and legal contract.

Mr. CURTIS. Does it seem possible that they would hold a regular council off in one corner of the nation when they had a regular place to meet?

Mr. HEMPHILL. They do not seem to have held it off there. Mr. Gibson says so, but all the other people say it was held in the regular way.

Mr. CURTIS. No; they say they stayed off there for two weeks to keep from going to the payment, and then they went to the payment at the county seat.

Mr. HOGG. Whatever contract was entered into it is evident that the contract was never approved by the Department. Now, then, if they allowed \$50,000 that could not be taken to mean more than it appears, and that is that the Department was willing to allow \$50,000. It is not an approval of the original contract. Now, if they had been willing to submit their rights to the Department, if that letter is true, as to submitting their claim to the Department for payment for the full amount or what they think is fair, I think they are bound by it. That is what I would like to hear you on.

Mr. HEMPHILL. The original contract by which they agreed to employ these persons was made prior to the time that the Indian contracts had to be approved by the Interior Department. Before the one of 1873 was made the law was enacted that an Indian contract should be made in a certain form and approved in a particular way, and the law requires that the Secretary of the Interior may pay to the amount that is asked or such sum as he sees fit to allow. So that when these gentlemen applied to the Department they were simply conforming to the law passed after their original contract was signed, but which of course was in force at that time.

Mr. HOGG. The original contract is not under consideration, can not be; that has been voluntarily annulled.

Mr. HEMPHILL. But this contract of 1873 is regarded as the basis of the settlement of the original amount.

Mr. CURTIS. The act was passed in 1872.

Mr. HEMPHILL. May, 1872, and this law going into force in the meantime and requiring that all contracts should be submitted to the Secretary of the Interior and no payment should be made, only such payments as he approved of, then these gentlemen were compelled to say in their letter, "We submit our contract to you and you pay us whatever is fair in your judgment."

Mr. HOGG. Do I understand that the contract could be enforced anyway without his approval? The law can not be that they could hold to their contract and then go before him and say, "You approve as much of this as you please." Their business was to go before him in the first instance with the contract. That is my idea; I may be wrong about it.

Mr. HEMPHILL. The law was passed. They may not have known that the law was in force at that time, like a good many other people. Of course, technically they were bound to know it, but as a matter of fact they probably did not know it; way out there in the Indian Territory they are not supposed to know every law that is passed in the country.

Mr. CURTIS. It was submitted in July after it was made in June?

Mr. HEMPHILL. No; it was made in June, 1873, and submitted in July, 1874. But the point is this: They were, as I say, obliged to submit it according to the law, and then when the time came for its approval and they found what had been done in the inside of the Department they said, "We won't accept that," and the Commissioner says that that was the understanding, "that they protested against it and said they would not accept it in full."

Mr. HOGG. I understand that.

Mr. HEMPHILL. Then, in addition to that, the Department opens it up for further consideration; and Mr. McCammon, who investigated the whole thing, reports that it was opened up for further investigation, and looking at the equities of the thing, he says that \$50,000 was not a fair compensation.

Mr. BURKE. Do you not think, as a general proposition, that services of attorneys as performed for Indians ought to be paid for on a basis of quantum meruit, rather than on the basis of some contract with the Indians?

Mr. HEMPHILL. I think it ought to be paid on the quantum meruit; and I will go further and say not only you ought to pay them for work done for Indians, but also the work in trying to get their money after they have done the work for the Indians.

Mr. HOGG. What objection is there to the Court of Claims trying it?

Mr. HEMPHILL. No objection except the difficulty of proof at this late day upon the merits of the proposition. I have not the slightest doubt that we would win.

Mr. HOGG. It seems to me that you have a good deal of proof that the service was rendered.

Mr. HEMPHILL. Now, speaking about this matter, after the money was paid, there is no question that the Osages have a number of times requested Congress to pay this money, and it strikes those of us who have some interest in the case that it is a very strange situation when the people who did the service claim the money and the people for whom it was done say it ought to be paid that Congress will not allow its payment.

Mr. BURKE. There was something said in your first statement this morning that the \$180,000 would have been paid so far as the Indians were concerned except that

the Secretary of the Interior held that the law of Congress to which you referred was not broad enough to admit of the payment of this claim. I would like to know a little more about that as to just what was done.

Mr. HEMPHILL. I can not put my hand on the act of Congress at this time, but they drew a warrant or order on the Secretary of the Treasury.

Mr. BURKE. Who did?

Mr. HEMPHILL. The Indians, signed by the chief and the business committee.

Mr. BURKE. I want to know something about the procedure there, because the drawing of a warrant by some of the Indians up in our country would not mean anything. Were they authorized to draw warrants?

Mr. CURTIS. I think that grew out of an act of Congress or in one of the appropriation bills of certain accounts in settlement of this fund.

Mr. HEMPHILL. This is dated August 16, 1880, and directed to President Hayes.

[Mr. Hemphill read aloud to the committee at some length, beginning, "SIR: Having learned that the Congress of the United States at its late session passed a law," etc., and ending, "It is a notorious fact that our Drum Creek treaty of 1877 was a fraud."]

I have the signatures of that here. I don't know whether the warrant is here or not.

Mr. BURKE. It refers to an act of Congress. I was wondering what that act of Congress was.

Mr. HEMPHILL. It was in 1880, I have forgotten the exact date, but I can furnish it, in which the provision was that certain money should be used for payment of the debts connected with the Osage trust lands, and that they thought that under that they were entitled to pay.

Mr. BURKE. What I want to know is whether there was a law under which claims were paid by the Indians themselves taking the initiative; in other words, whether they had anything to say about it.

Mr. CURTIS. I don't think so, so far as the Osage tribe was concerned.

Mr. BURKE. He speaks of the act of Congress.

Mr. HEMPHILL. Yes, there was an act of Congress which provided for the payment of certain debts and the money was to come out of the Indian trust lands, or some expression of that kind, and this land or part of it was originally designated trust lands, and Mr. Adair and his counsel at that time concluded that this was a debt that could be paid out of it and the Indians thought the same thing. Mr. Adair was assured here, in Washington, at the time it was passed, that the act did cover his case.

Mr. BURKE. What is the date of that?

Mr. HEMPHILL. 1880.

Mr. BURKE. And that is signed by whom? You were going to tell us.

Mr. HEMPHILL. By this Joseph Pawne, the governor of the Osage Nation, by Strike Ax, chief councilor, Hard Rope, Black Dog, and W. H. Conner, the business committee. It is witnessed by John M. Hiatt, Tisdale, John James, Robert Crawley, and Louis Cochran, and it is certified to by Judge Rider, judge of the Coowescoowe district of the Cherokee Nation.

Mr. BURKE. Have you any record of what happened with that petition?

Mr. HEMPHILL. I think that can be shown from the record in the case. My recollection is that that question came up before the Interior Department as to whether they could pay it under this act of Congress, and they decided they could not; that it was not broad enough to cover this case.

Mr. BURKE. Did they decide that because the law was not broad enough or because some previous Secretary of the Interior had settled it and it could not be reopened?

Mr. HEMPHILL. My recollection is that they decided that the law did not cover it. I can inform myself positively about that.

Mr. BURKE. I wish you would. Mr. Curtis is now looking for the act and he may find it.

Mr. HEMPHILL. Now, I want to say as to the action of the Board of Indian Commissioners, that the matter was referred to them and that they started an investigation down in the Indian Territory as to the conduct of Mr. Gibson, the Indian agent. Subsequent to that, and without a hearing from these parties, they decided that they would take the matter up and pass upon it upon the papers that were then before them, and they did pass upon this case without a hearing from Mr. Vann and Mr. Adair and before the question was investigated that they started out to investigate. So I do not think that their opposition ought to have any weight one way or the other.

Mr. CURTIS. The law referred to seems to be as follows:

"That all expenses incident to the disposition of Osage trust and diminished-reserve lands and Osage ceded lands in Kansas shall be paid by the receivers of public moneys out of the sums realized from the sales thereof, under the direction of the Secretary of the Interior; and all sums heretofore paid on account of the disposition of said lands shall be reimbursed the several appropriations out of which the same may have been paid from the proceeds of the sale of said Osage trust and diminished-reserve lands and Osage ceded lands."

WASHINGTON, D. C., *Monday, April 2, 1906.*

The subcommittee met this day at 11 o'clock, a. m., Hon. Charles H. Burke in the chair.

STATEMENT OF MR. J. J. HEMPHILL.

Mr. HEMPHILL. Gentlemen, since we were here last one of the parties interested in this matter has conferred with Mr. Neale and myself, and in view of the statements made by Mr. Curtis at the last meeting—Mr. Curtis, a member of the full committee—I thought it probable it would be more satisfactory to all parties concerned if, instead of taking the responsibility of determining this through the committee, it should be referred to the Court of Claims, and, if that meets with the approval of you gentlemen here, we should be entirely satisfied to have it take that course. Then I do not think anybody can complain in regard to the matter, because everybody will have his day in court. If the Indians owe the money, of course they ought to pay it; if not, we have no right to it.

Mr. HOGG. What was referred to the Court of Claims before—the question whether they could open it or not?

Mr. HEMPHILL. Yes; but the court decided that the Secretary had no authority to open the case, and decided that on the strength of the case in the Court of Claims known as the twentieth Illinois—

Mr. BURKE. That was the determination of the court?

Mr. HEMPHILL. The court determined as above stated. I have drawn up a provision to refer the case to the court and will read it to the committee. [Reads:]

"That jurisdiction is hereby conferred upon the Court of Claims to hear and determine the claim for services rendered by Clement N. Vann and William P. Adair, late of the Indian Territory, to the Osage Nation of Indians, in defeating a treaty between the said nation and the United States, executed in 1868, commonly known as the 'Drum Creek treaty,' and certain proposed legislation injurious to the Osage Indians for the sale of their lands in Kansas, and in procuring the enactment of other legislation favorable to said Indians for the sale of said lands.

"That a petition may be filed by the executor or administrator of the estates of said Adair and Vann, respectively, in said court, within forty days from the approval of this act, against the Osage Nation of Indians, and service of said petition shall be had by delivering a copy thereof to the governor of said nation, with a notice to answer within the time herein prescribed; and said answer shall be filed in said court within forty days after the service of the petition.

"The court may receive and consider all papers, records, and documents heretofore filed either in said court or the Executive Departments of the Government, together with any other evidence offered by either party to the case, and shall render a judgment or decree against the Osage Nation of Indians for such amount, if any, as the court shall find legally or equitably due for the services of said Adair and Vann either upon contract or upon a quantum meruit, not exceeding \$180,000. The court shall enter judgment for the total amount found to be due, if any, and shall specify therein the amounts payable to any person or persons under any contract or assignment made since September 26, 1902, covering any portion of said claim. The amount necessary to pay said judgment is hereby appropriated out of the funds in the Treasury of the United States to the credit of said Osage Nation.

"Said cause shall be advanced on the calendar of said court, and the statute of limitations shall not be a bar to the commencement or prosecution of said case. The amount for which judgment may be rendered by the Court of Claims, when paid to the parties named in said judgment, shall be received in full and final settlement of the claim for said services of said Adair and Vann against said nation of Indians."

Now, I am not authorized to say so, but I think there is no question but that that will be satisfactory to Mr. Curtis, and if it is satisfactory to you, gentlemen, I think it ought to be satisfactory to our friends on the other side, because, as I stated the other day, when reference to the court was suggested before, the only difficulty in

the way was the difficulty of having witnesses who were cognizant of all the facts in 1873. But that is something that will fall upon both sides, and there will doubtless be a number of witnesses who were living at that time and who can be produced in court.

Mr. HOGG. What about the provision in there, Mr. Hemphill, as to the quantum meruit?

Mr. HEMPHILL. The reason for that is, you know, some of the parties hold that the contract of 1873 was not a complete contract, and another question raised is whether these parties really rendered the services that they agreed to render.

Mr. HOGG. That would come up under the allegation of the contract just the same. The only question in my mind was this: Does not that legislation affect the provision that these contracts must be approved?

Mr. HEMPHILL. Our point about that was this: That the original contract was made in 1869, and that the contract of 1873 was simply a settlement of the contract of 1869—in other words, they were continuing papers—and that the second paper was simply a statement of account, you might say, between the two, and that view, I think, can be sustained. But even if it is not sustained, there is no question but that these parties rendered valuable service. Whether they rendered all the service or not, I do not know. Some people say not. My opinion is that they rendered the service that won the fight for those Indians, because I do not believe in those fellows that come in after the whole thing is over and claim all the credit. I have had a good deal of experience of that myself. They are not worth a penny.

Mr. MCGUIRE. For twenty-five years I have lived adjacent to the Osage Indian tribe. When I lived in Kansas, I lived immediately north of them, on the Kansas side, and I am more or less familiar with some of the tribal conditions, and at this time and since my Kansas residence I have lived immediately south of the tract, and am acquainted with almost every individual Indian in that tribe. I have heard this claim discussed a number of times by persons who are members of the tribe. I do not believe in this claim. I am not prepared now to go into details. On two occasions I heard this claim discussed among the Indians in council, and particularly by a party named Dunlap, who was for forty or fifty years a trader among the Indians and talked their language. I heard it extensively discussed by him and some other parties who were somewhat familiar with the details. The idea that I gathered in general at that time was that there was nothing in this claim.

Now, I want to submit this: That so far as the appearance of attorneys in a case of this kind for an Indian tribe is concerned, the policy of this Government has always been, as I understand it, to give the tribe every possible advantage. It is true enough that attorneys may, as representing a tribe, present the law and assist in presenting the facts, and all that sort of thing; and if this thing was done, of course the attorney should have pay for the services actually rendered; but I know that there is an intense feeling against this claim in that country by all parties who know anything of the facts or who claim to know anything of the facts.

You take the older members of the tribe; on one or two occasions some of the leaders, some of the members of the tribe, have softened a little in reference to it, but I know that at least one member of the committee understands Indians, and knows what influences may sometimes affect the Indian, and I know that the honest sentiment of the Osage tribe of Indians is most intense against this claim; and if there is any likelihood of this claim being opened for reconsideration I want some time to be heard on it. Those are my constituents, and this claim, upon its face, is outrageously high. It is useless to say that any firm of attorneys earned \$180,000 in such a case. It could not be done in such a transaction, or in two transactions, with this tribe of Indians concerning anything they have had with the Government of the United States.

Mr. HOGG. The allegation is that they have saved them about \$8,000,000. So far as that is concerned, I do not think the fee is an exorbitant fee if they secured these results. I do not think that.

Mr. MCGUIRE. Then, again, a fee of this kind does not lie dormant for forty or fifty years without the Government giving it consideration.

Mr. HOGG. It has been regularly brought before Congress?

Mr. MCGUIRE. It has been a number of times turned down.

Mr. NEALE. You have not read the record, evidently.

Mr. MCGUIRE. There is something the matter somewhere or the Government would have allowed this fee.

Mr. HOGG. This does not appeal to me very much. I do not know how Mr. Burke feels about it, but we want the facts. We will draw the conclusions ourselves whether it is fair or unfair.

Mr. MCGUIRE. I say I am not prepared to go into the details about it, but I say if there is any likelihood of the committee considering this claim further I want an

opportunity to be heard. These people are my constituents, and I think I have a right to be heard.

Mr. HOGG. It seems to be agreed here, so far as I can gather, that when they received the \$50,000 they protested and accepted the sum under protest, and I will say frankly, Mr. Hemphill, that this letter in your brief strikes me as very material if they are willing to submit their matters to the Interior Department as to the fairness of the charge, and submit their contract. Whatever may have been the former contract, they agreed to enter into a new one, and did enter into it, thereby annulling the former one. That can not be considered in connection with it at all. If they went into that and agreed to abide by it or to submit their differences to the Department, and they ruled, I am pretty strongly of opinion that it ought to bind them.

Mr. HEMPHILL. You must remember, Judge, that the law requiring that that should be done was passed after the original contract was made, so that that was practically compulsory upon them. There was nothing else they could do.

Mr. HOGG. They could have rested on their original contract.

Mr. HEMPHILL. They could have surrendered their original contract and taken this one. There is a difference of opinion. These gentlemen have one view of it, and we have another. What is the usual rule under these circumstances between citizens of the United States? Do they not go to court? If these Indians have a just case, they need not fear any court. Believing we have a just case, we do not fear any court.

Mr. McGUIRE. Mr. Chairman, if this was between citizens it would not be here. The thing is so long since outlawed by the statute that it would not come up this way.

Mr. HEMPHILL. It is not outlawed by the statute.

Mr. HOGG. As I say, Mr. Hemphill, it raises that question. That is a right that the Indians would have to insist on. As a defense the limitation possibly would run against it.

Mr. HEMPHILL. I am willing to knock that out. It is not of importance.

Mr. HOGG. What do you make of the quantum meruit?

Mr. HEMPHILL. If we have rendered the service, and they have over and over again asked that it be paid, then I think the court should have the right to determine the quantum meruit. If the service had been rendered since the law passed that would be all right; but the service was started before that law was enacted.

Mr. HOGG. That is true.

Mr. HEMPHILL. The truth is, if a man has an honest claim he ought not to fear the courts of the country; and if a man has an honest defense he ought not to fear them.

Mr. BURKE. Judge Hemphill, I want to call your attention to a communication which I have from the Treasury Department in relation to this claim. I would like to have it made a part of the record [submitting letter]:

TREASURY DEPARTMENT,
OFFICE OF AUDITOR FOR INTERIOR DEPARTMENT,
Washington, March 29, 1906.

HON. CHAS. H. BURKE,
House of Representatives.

MY DEAR MR. BURKE: In compliance with your request I have the honor to transmit herewith a true copy of the voucher in the claim of William P. Adair and C. N. Vann, attorneys for the Osage Nation of Indians, settlement of which was made in this office August 4, 1874, in the sum of \$50,000, which amount was paid from the appropriation, "Fulfilling treaty with Osages, proceeds of lands, \$200,000, act June 22, 1874, to be expended for the Osages under the direction of the Secretary of the Interior." Payment of the \$50,000 was made to the claimants present.

The records indicate that a contract was originally entered into November 10, 1869, by the terms of which they, the Osages, agreed to give the attorneys, Adair and Vann, "one-half of all the net proceeds of their lands after deducting what was to be paid them by the United States under the treaty." That contract appears to have been abrogated in 1873 and another entered into limiting the consideration of the attorneys to \$330,000. That contract appears not to have received the approval of the tribe until the consideration was reduced to \$230,000.

In a brief filed by W. P. Adair on July 13, 1874, he asked "that the Secretary of the Interior and the Commissioner of Indian Affairs will approve said contract for the whole amount thereof, or for so much as they may deem just and equitable in the premises, and that the said Secretary will order such an amount as he may deem to be due to at once be paid to affiant."

The contract for \$230,000 was approved July 21, 1874, by the Acting Secretary of the Interior in the sum of \$50,000. This contract was the basis of the settlement made for the payment of \$50,000 as above stated.

Respectfully,

R. S. PERSON, Auditor.

The United States, to Wm. P. Adair and C. N. Vann, dr., attorneys for the Osage Nation.

1874.

July 31. For services rendered the Osage Nation of Indians, in accordance with an agreement between the chiefs and headmen of said nation and the claimants, dated February 8, 1873; ratified by resolution of the Osage Council, in general council of the chiefs and councilors of the Osage Nation, June 26, 1873, and approved by the Acting Secretary of the Interior, July 21, 1874..... \$50,000
Account stated in Indian Office..... 50,000

Approved:

B. R. COWEN, *Acting Secretary.*

Then I would like to confer with Judge Hogg as to what we will do in regard to acting upon the case promptly, or deferring it. Now, Mr. McGuire is a member of this committee, and he represents these Indians who, I presume, are citizens of the United States—are they not, Mr. McGuire?

Mr. MCGUIRE. They have tribal relations yet.

Mr. HEMPHILL. You do not represent these particular Indians, but you represent Oklahoma, as I understand it?

Mr. MCGUIRE. Yes; this is a part of Oklahoma, and these are in a sense my constituents.

Mr. BURKE. We would, of course, be inclined to give Mr. McGuire an opportunity to present anything that he might wish in behalf of these individuals. They are not represented here by counsel, and the Delegate from Oklahoma, especially in view of the fact that he is a member of this committee, ought to have a right to be heard.

Mr. HEMPHILL. I would like to say, so far as speedy action is concerned, that I do not want to do anything that would prevent Mr. McGuire from presenting his views on the subject, but these people are just as well satisfied that they are entitled to this money as I am that I am entitled to my own pocketbook. Since 1870 they have been trying to get it. The father is dead and the mother is dead, and the grandchildren are now trying to get this money, and if it can be brought to a speedy conclusion we would, of course, like very much to have it so brought.

Mr. HOGG. Probably they might have some other matters to submit that they are on the track of now, and I told them if they did I wished they would wait before any action is taken.

Mr. HEMPHILL. As to the language here, why not say, "Either upon a contract or upon a quantum meruit, if the court decides there is no contract?"

Mr. HOGG. I do not think we want to go to that extent. That abrogates a law. I think that court would not have any authority to set aside a provision of law that these contracts must be approved.

Mr. HEMPHILL. You must keep in mind the fact that the original contract was made prior to the passage of this act.

Mr. HOGG. Your contention is that this is practically an adjustment of the original contract?

Mr. HEMPHILL. What is your idea about that?

Mr. HOGG. That the court shall determine whether a quantum meruit shall be interposed?

Mr. HEMPHILL. Yes; either that, or that the court shall decide upon the contract.

Mr. HOGG. Otherwise, passing it baldly that way, it would seem to authorize them to decide on the quantum meruit.

Mr. BURKE. If you fix that in that way, according to your judgment, I will accept whatever is acceptable to you, Judge Hogg.

Mr. HOGG. No; I do not want that done, but that excepts it: "Provided, That the said court shall determine that the plea of quantum meruit may be interposed and considered."

That saves the question whether it is a proper plea or not. I think you ought to give them a little further time to answer.

Mr. HEMPHILL. I give them forty days here.

Mr. BURKE. They ought to have sixty days at least.

Mr. HOGG. All of sixty. I imagine if this thing goes to the Court of Claims these parties would have to get together down there and authorize somebody to represent them.

Mr. HEMPHILL. They have a governor and committee to look after their affairs.

Mr. W. M. DIAL. We would like to have jurisdiction over it, or the Osage council, to allow us representation on this matter if referred to the Court of Claims.

Mr. HEMPHILL. The Interior Department has ample authority for that.

Mr. DIAL. We would like to have it understood that the Osages are entitled to employ counsel.

Mr. HOGG. You do not want it left to the Department entirely? You want to employ your own counsel?

Mr. DIAL. Yes.

Mr. HEMPHILL. The law is that if any Indian tribe employs counsel the contract is to be approved by the Department, just as all other contracts are approved.

Mr. HOGG. We can find out from the Department if they say you shall have any; then it will not be necessary to put it in.

Mr. HEMPHILL. Will I put in sixty days?

Mr. HOGG. Yes; say sixty days. Do you think you can get your answer up in sixty days?

Mr. DIAL. I think perhaps ninety days would be necessary. The council is sometimes hard to get together. We have an election coming on now, and it is a new set of officers.

Mr. HOGG. The forty days would have gone by by the time of the approval of the act.

Mr. DIAL. Make it ninety days in which they shall answer.

Mr. HOGG. Give them plenty of time to look up the testimony, and all that sort of thing, in which to prove.

Mr. BURKE. Then you said you would eliminate the statute of limitations?

Mr. HEMPHILL. Yes; we will strike that out.

Mr. HOGG. Under your contention that would hardly run, anyway?

Mr. HEMPHILL. No; I do not think it would apply at all. Here is the resolution in form as I have amended it. [Submits resolution:]

"That jurisdiction is hereby conferred upon the Court of Claims to hear and determine the claim for service rendered by Clement N. Vann and William P. Adair, late of the Indian Territory, to the Osage Nation of Indians, in defeating a treaty between the said nation and the United States, executed in 1868, commonly known as the 'Drum Creek treaty,' and certain proposed legislation injurious to the Osage Indians for the sale of their lands in Kansas, and in procuring the enactment of other legislation favorable to said Indians for the sale of said lands.

"That a petition may be filed by the executor or administrator of the estates of said Adair and Vann, respectively, in said court, within forty days from the approval of this act, against the Osage Nation of Indians, and service of said petition shall be had by delivering a copy thereof to the governor of said nation, with a notice to answer within the time herein prescribed, and said answer shall be filed in said court within ninety days after the service of the petition.

"The court may receive and consider all papers, records, and documents heretofore filed either in said court or the Executive Department of the Government, together with any other evidence offered by either party to the case, and shall render a judgment or decree against the Osage Nation of Indians for such amount, if any, as the court shall find legally or equitably due for the services of said Adair and Vann, either upon contract or upon a quantum meruit, provided said court shall determine that a plea of quantum meruit may be interposed and considered, not exceeding \$180,000. The court shall enter judgment for the total amount found to be due, if any, and shall specify therein the amounts payable to any person or persons under any contract or assignment made since September 26, 1902, covering any portion of said claim. The amount necessary to pay said judgment is hereby appropriated out of the funds in the Treasury of the United States to the credit of said Osage Nation.

"Said cause shall be advanced on the calendar of said court. The amount for which judgment may be rendered by the Court of Claims, when paid to the parties named in said judgment, shall be received in full and final settlement of the claim for said services of said Adair and Vann against said nation of Indians."

Mr. DIAL. I would have to get advice on that proposition.

Mr. BURKE. He is not a lawyer.





HEARING

BEFORE THE

COMMITTEE ON

INDUSTRIAL ARTS AND EXPOSITIONS

OF THE

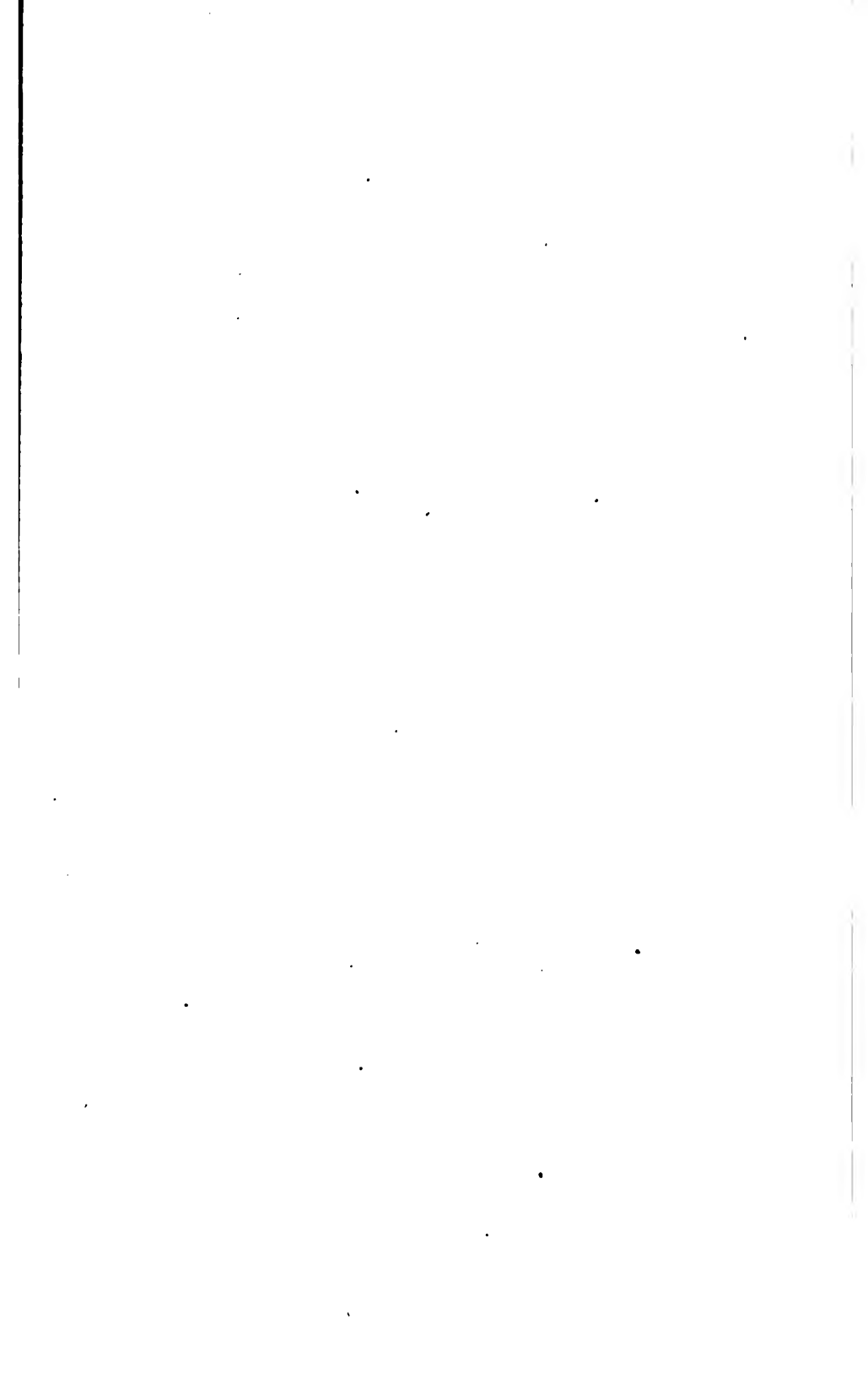
HOUSE OF REPRESENTATIVES.

JAMESTOWN EXPOSITION.

FEBRUARY 19, 1906.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.

1906.



JAMESTOWN EXPOSITION.

COMMITTEE ON INDUSTRIAL ARTS AND EXPOSITIONS,
Monday, February 19, 1906.

The committee this day met, Hon. Augustus P. Gardner in the chair.

The CHAIRMAN. The committee is ready to hear from Mr. Tucker.

STATEMENT OF HON. HENRY ST. GEORGE TUCKER, PRESIDENT JAMESTOWN EXPOSITION COMPANY.

MR. TUCKER. Mr. Chairman and gentlemen of the committee, the bill before your committee, like old Gaul, is divided into three parts. There is a provision for a Government exhibit in it in the first part; there is a provision in it for carrying out the law of March, 1905, passed by Congress, and there is a provision in it with a coinage feature which will be explained later.

There is not a cent asked for in this bill, I may say at the outset, to be taken from the Treasury of the United States and to be put into the treasury of the Jamestown Exposition Company, not a dollar, and while the Jamestown Exposition Company is well represented here this morning, as you see by the number of people, I really find myself appearing not for that company, but for the Government of the United States.

Let me repeat that there is not a dollar in the bill asked for to be taken from the Treasury of the United States to be put into the treasury of the Jamestown Exposition Company.

Now, Mr. Chairman, the question which we have to-day is not a question whether this committee or Congress approved of the original idea of having a celebration of this character at Jamestown. The question is whether or not the Congress of the United States is going to carry out a law passed by it during the last Congress. The propositions here are distinct. The naval display and the Jamestown Exposition—distinct as billows, but one as a sea.

The President of the United States, in his last message, as you well remember, emphasized the necessity of this appropriation in the following language:

I again heartily commend to your favorable consideration the tercentennial celebration of the settlement at Jamestown, Va. Appreciating the desirability of this commemoration, the Congress passed an act, March 3, 1905, authorizing in the year 1907, on or near the waters of Hampton Roads, in the State of Virginia, an international naval, marine, and military celebration in honor of this event. By the authority vested in me by this act, I have made proclamation of said celebration, and have issued, in conformity with its instructions, invitations to all the nations of the earth to participate by sending their naval

vessels and such military organizations as may be practicable. This celebration would fail of its full purpose unless it were enduring in its results and commensurate with the importance of the event to be celebrated, the event from which our nation dates its birth. I earnestly hope that this celebration, already indorsed by the Congress of the United States, and by the legislatures of sixteen States since the action of Congress, will receive such additional aid at your hands as will make it worthy of the great event it is intended to celebrate, and thereby enable the Government of the United States to make provision for the exhibition of its own resources, and likewise enable our people who have undertaken the work of such a celebration to provide suitable and proper entertainment and instruction in the historic events of our country for all who may visit the exposition and to whom we have tendered our hospitality.

But we do not stand alone on that message. I will put this bill upon the simple ground of the Government's good faith in carrying out what the Government has already determined to do. In fact, it is not a question of whether gentlemen originally approved of this celebration. There are many men, Mr. Chairman, who did not approve of the Cuban-Spanish war, but what man after the Government had determined it could stand in the gaze of public light and say that he was not in favor of his Government's action? It is true that here and there there were men, but they were greatly criticised. It is not a question of what our original idea was, but when the Government has undertaken a proposition, when it has developed its policy, whether or not we are justified in not carrying that policy out.

We appropriate often—we used to in Congress, and I doubt not you do now—a few thousand dollars to get plans and secure a site for the location of a public building. What does that mean? It means that the Government is morally bound to carry it out. We find all along the line in the river and harbor bill appropriations for starting improvements. The moral faith of the Government is pledged to carry it out. Here we say that the Government last year declared for a naval celebration at Jamestown, and we bring this bill to you merely asking you to carry out that part of the Government's proposition.

The CHAIRMAN. Is this \$1,340,000 to be pledged to carry out the naval celebration of the Government?

Mr. TUCKER. All except one proposition, and that is the Government's exhibit. As I recollect, there is a Government exhibit provided of \$300,000 or \$400,000 or \$500,000, but the \$1,200,000 or \$1,300,000—

The CHAIRMAN (interrupting). You spoke of carrying out the public statute No. 211 of last year.

Mr. TUCKER. Yes, sir. The Government's exhibit is separate, and the Government's exhibit is not involved in the statute of 1905.

The CHAIRMAN. For instance, I find that by section 3 of the bill you provide \$500,000 for certain buildings. Are those in connection with the public statute No. 211, providing for the marine exposition?

Mr. TUCKER. That is what we claim, sir.

The CHAIRMAN. That seems to be for the purpose of an exhibit of the resources of Alaska, under the reading of the bill, but we will take that up later.

Mr. TUCKER. My point is simply this, that so far as the provisions of the bill go looking to carrying out the naval celebration the Government's faith is pledged to it. Now, how are you going to do it? We have laid down there certain things which we think are necessary. The committee may not think they are all necessary, and I want to say just here on that point that unless the members of this

committee are different from the members of Congress and the representatives of the Jamestown Exposition Company you do not know any more than we do what is necessary for a proper celebration such as is provided for by the law of 1905. We have given you in this bill what we think is necessary. Who knows? Nobody better than the Navy Department of this Government, nobody better than the War Department of this Government, and we ask you in consideration of this bill carrying out these provisions looking to this naval display that those Departments of the Government who under the law of 1905 have the duty of carrying out that law ought to be consulted in order to determine what is best. We provide there for a pier. Is that necessary? We think it is. If it is not, ask the Navy Department if it is not. We provide there for certain entertainments for the officers and men of the fleets that are coming here. Are those necessary provisions? I do not mean can you get along without them, but are they necessary in proportion to the nature of the celebration we are going to have. The world is coming here with its fleets. The invitation of the President has been accepted. There is not a nation in Europe to which it has been presented that has not accepted it. They are coming. They are coming, I was going to say, 10,000 strong. They are coming hundreds of thousands strong, and it is for the gentlemen of this committee and for Congress to determine how we shall meet in a hospitable way, in a proper, not in an extravagant, way, how we shall meet the demands of hospitality which were put upon us by the action of Congress in the last Congress.

Mr. POLLARD. Concerning the exhibits of foreign powers, I want to inquire whether you have received word from any of the foreign powers who have been invited to participate in this naval display whether they expect to do so—whether you have any positive information along that line?

Mr. RODENBERG. You have just completed a tour of Europe?

Mr. TUCKER. Yes, sir.

Mr. MAYNARD. Please enumerate what you did.

Mr. TUCKER. I went to England, to Berlin, to Vienna, to Rome, and to Paris. I received in England, at Rome, and in Paris from the heads of the Governments full and ample assurance that they would be represented in accordance with the powers of those separate Governments as war powers in this celebration. In Berlin by an accident I did not see the Emperor. I saw the secretary of state and the secretary of the admiralty and the secretary of war, and the assurance was given me as positively as it could be by anyone except the original power that they would certainly take pleasure in joining in this celebration. I have letters also from Denmark, from Greece, from Spain, and from Belgium. I have no letter from Japan or any answer. The invitation has gone there, but it takes some time.

In other words, there was no country that I visited that I did not receive directly from the ruling power or from the secretaries of war, navy, and state the assurance that they would be here. Austria has a very small navy, but Mr. Bellamy Storer tells me that he has every hope that Austria will be represented by at least a vessel or two. I have no doubt, gentlemen, of the size of the celebration—none in the world. I put it as the President put it to me—that we want it to be the greatest naval celebration the world has ever seen, and it is

for you to say how you will meet the demands of hospitality in receiving the fleets of the world here.

Mr. MAYNARD. This being largely an English-American enterprise, I think the committee would be interested in hearing what the English people thought of it and what they expect to do in the way of participation.

Mr. TUCKER. I was asked in England by Lord Twedmuth, the vice-lord of the Admiralty, "What do you expect from us?" I said, "Your whole navy," which created a smile. He said, "Seriously?" I said, "We want four or five representatives of every class of vessel which you have." That seemed to meet with his entire approval. When I saw the King, I may say, gentlemen, a more cordial reception was never had by any man than that accorded me by the King. As he took me by the hand, he said, "Mr. Tucker, I know of your mission, and I want to say this, England deems it a great privilege to be allowed to cooperate with America in such a celebration." I found no trouble anywhere on that point, and the question for us is what are we going to do with them when they come.

Mr. BOWERSOCK. Of course you assume that some official action must be taken by those Governments; that the assurances which you received were along the line President Roosevelt himself would give you if you came from England here, and hence some official action must be taken before you can base any positive statement on what those Governments will do. No official action, so far as you know, has been taken?

Mr. TUCKER. I inquired about that. I asked in England especially what that meant. I was a good deal like you are. I asked it for this reason. I saw the old cabinet. I got in England before the old cabinet went out. I got back to England when the new cabinet was in, and I said to them there, "Is it necessary for me to see the new cabinet?" They said, "Not at all," and the King said to me when I saw him, "Your mission is perfectly understood. The last thing Lord Landsdowne said to me was to bring this matter to my attention and to tell me the Government—he being the Government—had accepted the invitation on the part of the English people," and so I understand it.

In Germany I think, in reply to your question, it is necessary for the council to act. I do not think the cabinet officers can accept. I think it must go before the council, but I do not so understand it in England.

Mr. MAYNARD. Did they accept in Italy?

Mr. TUCKER. Yes, sir. The King and the admiralty were as cordial there as in France.

I want to leave the discussion of the details of the bill to gentlemen better posted about them than I am. There is only one provision of the bill that I want to discuss for a moment before the committee, and that is the coinage feature. That feature, gentlemen, as you understand, provides that the Treasury of the United States shall coin 1,000,000 two-dollar pieces under the coinage laws now in existence, to be purchased by the Jamestown Exposition Company in \$50,000 bulks and for which they must pay the commercial value of the silver in the coin.

In other words, if silver to-day is worth 60 cents the Jamestown Exposition Company would have to pay to the Government \$1.20 and

get a \$2 piece for it. Now, of course, the Government would lose not a dollar by that procedure. They would merely coin it and we would pay them for the silver, and we would sell them, and the company would expect to make about a million dollars out of it; but still, gentlemen, not a dollar would be taken from the Treasury of the United States and put into the treasury of the Jamestown Exposition Company, and we would pay for that silver the value of the coin when we got it.

Mr. GOLDFOGLE. Would it be redeemable by the Government?

Mr. TUCKER. Yes, sir; if they ever got into circulation. Our theory is that they would not get into circulation. If a man had some of this money in his pocket, and if he had to pay his hotel bill the last thing he would spend would be that dollar, and if it went to the hotel man or the grocery man the last thing that man would put out would be that dollar. We do not think they would circulate.

Mr. RODENBERG. I think your assumption is quite right.

Mr. MAYNARD. I would suggest that the people informed on this subject say that the regular coin collectors would absorb 40 per cent of them.

Mr. TUCKER. Yes, sir.

The CHAIRMAN. Supposing after these \$2,000,000 were coined that the Government should decide to use them for the meritorious purpose of paying the salaries of members of Congress, they would pay \$2,000,000 of salaries, would they not?

Mr. TUCKER. Yes, sir.

The CHAIRMAN. On the other hand, if they hand them over to you they only accomplish \$1,200,000 worth of results?

Mr. TUCKER. Yes, sir.

The CHAIRMAN. And is that not paying \$800,000 out of the Treasury of the United States into the treasury of the exposition company?

Mr. TUCKER. Not at all. Our theory is this, that we have to take \$1,200,000 of another legal tender to get the \$2,000,000 out of the Treasury. We would gain \$800,000. The Government would not lose a cent.

Mr. GOLDFOGLE. Assuming that the coins would not be turned in for redemption?

Mr. TUCKER. Yes, sir.

Mr. GOLDFOGLE. And assuming that no combination would be created for the purpose of getting the coins?

Mr. TUCKER. Yes, sir.

The CHAIRMAN. You are not a sworn witness?

Mr. TUCKER. I hope it is not necessary.

The CHAIRMAN. It is not necessary; but, in your opinion, would this all remain without coming to the Government for redemption?

Mr. TUCKER. No; I think some would come.

The CHAIRMAN. And in your opinion, as a guess, what proportion of it would come back?

Mr. TUCKER. I say a very small proportion.

The CHAIRMAN. Would you say that a million dollars' worth would come back?

Mr. TUCKER. No, sir.

The CHAIRMAN. Would you say \$800,000?

Mr. TUCKER. No, sir.

The CHAIRMAN. Some of your committee would put it as high as that?

Mr. TUCKER. I do not think so; it is a mere matter of opinion.

The CHAIRMAN. Would you say, as a guess, \$600,000?

Mr. TUCKER. I think, Mr. Chairman, that when a man gets hold of one of these coins and appreciates what it represents that it is the last thing he will give up.

The CHAIRMAN. Coming down on that staircase a little further until I meet your views, do you think that \$400,000 worth would come back?

Mr. TUCKER. I will say no, for the sake of the argument.

The CHAIRMAN. Pretty soon it will be reduced to your original statement. Do you think that \$200,000 worth would come back?

Mr. TUCKER. I do not know; I think a few might come back.

Mr. McKINNEY. Supposing that the Democratic party should have gotten into power, would we not have to cash in our souvenirs, no matter how much we wanted to keep them?

Mr. TUCKER. Gentlemen, you are striking me now on a very delicate subject.

Mr. POLLARD. I want to inquire how you expect to float this money, get it out in circulation, out of your hands?

Mr. TUCKER. I am going to let these other gentlemen tell about that. I am not a financier in that direction, but I think they have a plan by which they expect to sell them and, of course, make on them.

Now, I may say in reference to this matter, which may not be news to the committee, that wherever you touch the currency I know it is a very delicate subject. I know whereof I speak. I might be sitting around this table with you gentlemen but for my views on that subject. In 1896 when my party did not come into power I had certain views on the money question that were not in accord with the dominant part of my party, and I went out of Congress because of it. I have no regrets about it. I merely mention it for this fact, that as I stood then for what I believed to be the good of the country, and gave up what I did not want to give up, for I know none of us like to give it up. I am incapable of suggesting a proposition to this House now that I do not regard to be sound. There may be objections to it. I merely mean to say this, that a government which has \$500,000,000 of silver floating could float this amount without the slightest difficulty and could stand behind and lend us not money, but its credit, in order to effectuate this celebration as it ought to be.

Mr. WOODYARD. Have you any information as to the number of these souvenir coins for the Chicago exposition that were redeemed, as to the proportion?

Mr. TUCKER. My recollection is that those coins were not redeemable; that they were 50-cent pieces.

Mr. MAYNARD. They were redeemable under all laws the same as other subsidiary coin.

Mr. POLLARD. I do not think 50 cents is a legal tender.

Mr. MAYNARD. They were under all the laws of other subsidiary coin.

Mr. TUCKER. Yes, sir. My recollection is that the 50-cent piece was never a legal tender, but that I am going to leave to gentlemen better qualified to speak of it than I am.

I simply want to impress upon you this one idea. It is not an original question of whether we are fools for going into this scheme or not. This naval exposition did not originate with the Jamestown Exposition Company. The President of the United States has suggested it as a means for stimulating the minds and hearts of the American people for a navy. We have got it. We like it. It is going to be a good thing for the exposition, but it is not of our suggestion. It is put upon us by the Congress of the United States, and we ask you to stand up for it and make it such a demonstration as in your judgment will be worthy of the great occasion and worthy of the nations of the world who are coming here to participate with us.

Mr. McKINNEY. In order to make it a great success is it not necessary to have something outside of a purely naval display to attract the people there?

Mr. TUCKER. Oh, yes; undoubtedly.

Mr. RODENBERG. The exposition company is attending to the industrial features itself?

Mr. TUCKER. Yes, sir. While it was not of our conception at all, I regard it as probably the most important thing connected with our exposition. I think it is going to draw more people.

Mr. McKINNEY. Can not you tell us as to your need for means in order to carry on something that will supplement the Government's idea?

Mr. TUCKER. Yes, sir. Let me say, in reference to that, of course this naval display is going to put on us very great burdens. There are all sorts of things that they tell me we will have to provide for. We simply want the Government to take their part of the laboring oar in this matter.

Gentlemen, I am very much obliged, and I would be very glad to answer any other questions that you may desire to ask.

The CHAIRMAN. Now, you place yourself, as I understand it, on the fact that you have had, much against your will, imposed upon you the necessity of carrying out the law of Congress. What law do you refer to?

Mr. TUCKER. The law of last March.

The CHAIRMAN. Of March 3, 1905?

Mr. TUCKER. Yes, sir.

The CHAIRMAN. I find that there is a provision for an international naval, marine, and military celebration.

Mr. TUCKER. Yes, sir.

The CHAIRMAN. In furtherance of which object and some others we appropriated in the next section \$250,000. I should have supposed that that was the provision for carrying out the law, and I should think that under any construction that that was as far as we were bound to act unless we were notified by the War Department or the Navy Department that it could not be done for that appropriation.

Mr. TUCKER. Let me say to you, Mr. Chairman, right there, when that appropriation was made we did not know what it was going to amount to. We did not know what the celebration would be. We did not know whether the governments of Europe would accept. Now, I am here to say they have accepted, and far beyond our expectations.

The CHAIRMAN. Your mission abroad has not been exclusively to invite the people to the marine and military exposition, has it?

Mr. TUCKER. Practically.

The CHAIRMAN. You have not asked for any industrial exhibits?

Mr. TUCKER. Not a particle, only where individuals came to see me, but I found that when the governments of Europe found there was a man with an exposition on his shoulders they began to look with suspicion and I might say disgust. They were tired of it. But in the acceptance of this invitation there was nothing except the most perfect cordiality.

The CHAIRMAN. Do you understand that the United States intends to increase her fleet over what it proposed to do last year?

Mr. TUCKER. I have no information about it.

The CHAIRMAN. Because I notice in this letter from Hon. Paul Morton, dated February 3, 1905, that he estimates as necessary for entertaining visitors, so far as the naval visitors are concerned, between \$135,000 and \$150,000, and so I find the estimate of Hon. William H. Taft, Secretary of War, is that the cost for entertaining the foreign military officers would be perhaps \$25,000. Those were the estimates last year, and the committee having considered them appropriated a certain sum for carrying out that purpose.

Mr. TUCKER. May I state right there that in talking with Secretary Shaw and Secretary Taft just the other day by reason of what they know about the action of foreign countries, Secretary Taft seems to be very doubtful whether we have not gotten more than we anticipated. In other words, it shows what I say, that when the bill was passed we did not know what countries were going to accept the invitation.

Mr. GOLDFOGLE. Has any part of the appropriation already made been expended?

Mr. TUCKER. No, sir.

Mr. POLLARD. Have you carried on any correspondence with the heads of the foreign governments in relation to the displays they intend to make?

Mr. TUCKER. No, sir; nothing except the interviews which I had.

The CHAIRMAN. I understand that those interviews simply related to the naval exhibit.

Mr. TUCKER. Naval, military, and marine.

Mr. HOWELL. I want to know whether the invitation to attend this celebration was extended by the officers of the Jamestown Exposition or by the Government of the United States?

Mr. TUCKER. By the Government of the United States through the Secretary of State.

Mr. HOWELL. Would there not be some official response to that invitation to some of the authorities here in Washington?

Mr. TUCKER. Yes, sir.

Mr. HOWELL. So far no official responses have been made?

Mr. TUCKER. I do not know. I never inquired at the Department. I did not think that it was necessary. Acceptance has been made, and I asked all of our ambassadors to keep in touch with them. I have just gotten home, and I have had no further correspondence.

Mr. MAYNARD. This bill specifically sets forth that the Government assumes no responsibility as to the industrial exposition?

Mr. TUCKER. So I understand.

The CHAIRMAN. You say to the committee that the bill which you introduce to us proposes to take money from the United States solely in furtherance to carry out the law of last year to which I called your attention. You appropriate \$1,340,000 directly or indirectly. I have looked over this very carefully, and I find three items which appear to me to be carrying out that law. I find on page 7, line 6, this language:

A building for use as a place of rendezvous for the sailors of the United States Navy and of the foreign navies participating in the celebration; a like building for the soldiers of this and other nations participating in the celebration; a soldiers and sailors' hospital, with ambulance service and all necessary equipments; a building for use as a place of rendezvous for the commissioned naval officers participating in the celebration, and a like building for the commissioned army officers participating in said celebration.

I, of course, can see the connection between that and the invitation we have given. I also find in section 4 that you provide that the Government shall make a contract for the erection and construction of a pier and landing. I take it, it is that pier which looks like an elongated mirror, and the Secretary of the Navy is to decide whether or not such a thing is necessary?

Mr. TUCKER. Yes, sir.

The CHAIRMAN. Do you think there was anything in the Secretary of the Navy's views last year as expressed to this committee which would contemplate the erection of anything of that sort?

Mr. TUCKER. I am not familiar with his views as expressed last year.

The CHAIRMAN. I take it that is about a mile around?

Mr. TUCKER. I do not know.

Mr. COTTRELL. I think it is 5,200 feet.

The CHAIRMAN. Five thousand two hundred and eighty feet is a mile. It is substantially a mile. Do you seriously think that it is a necessary form of landing, in order to prevent ladies wetting their skirts getting in and out of the launches?

Mr. TUCKER. I would say in reference to that, though I am not an expert, I do not mean to say that it is necessary. It is for the committee to determine what is necessary and proper in view of the celebration. Suppose we have 100 vessels there; suppose it is the greatest naval display the world has ever seen. I do not mean to say that we can not get the men from the vessels to the shore without that pier and landing; but in view of the great spectacle which we expect to have in Hampton Roads, whether that is a proper as well as a necessary thing, we are bound to have a landing or something of that kind.

The CHAIRMAN. You might have a temporary breakwater, costing \$3,000 or \$4,000; I concede that.

Mr. RODENBERG. Was this proposition for the construction of a pier, as contained in this bill, meant by the provisions of March 3, 1905, which provides \$15,000 for permanent moorings?

Mr. TUCKER. No, sir.

Mr. MAYNARD. I would say that the provision was in the bill last year reported by the committee, but it was not in the bill passed by the House. The special bill was introduced under a suspension of the rules. The bill reported by the committee provided for a pier. The committee adopted the provision on the recommendation of the

Bureau of Navigation of the Navy Department that it was absolutely necessary to have a safe landing there for the small craft, because when the wind was in a certain direction it would be so rough that it would be practically impossible for small boats to land in safety, and it was in view of the recommendation of the Secretary of the Navy and the Bureau of Navigation that the committee adopted the provision for the pier.

The CHAIRMAN. That it is necessary for the Jamestown Exposition Company to provide something for the landing of small boats is perfectly obvious.

Mr. TUCKER. As I said a moment ago, I do not know anything about that. There are gentlemen here who know more than I do. Is it not a matter at least that we can better leave with the Department of the Government that has this matter to carry out? What does the Navy Department want?

The CHAIRMAN. Now, another question. There are various items in this bill which occur to me to be subject to the argument that they are inserted for the purpose of carrying out the act of March 3, 1905, which purports to be carried out by the section contained in this bill.

Mr. MAYNARD. One word right there. There ought to be erected on Jamestown Island a pier. The act of March, 1905, provides for the erection of a monument. The Government has to land these men and material, and there ought to be a permanent landing. The only landing there is private property, and they charge everybody 25 cents to land there. If they charge the Government the same rate that they charge other people, it would be very expensive. The Government has to build a monument there because it is already a law.

Mr. TUCKER. I said there were three branches to this bill. First, we provide for a Government exhibit, and some of the items which the chairman does not think come under the provisions of the bill of 1905 are embraced in that. Second, those that are carrying the act of 1905, and, third, the coinage feature.

The CHAIRMAN. Who is Mr. John S. Wise?

Mr. TUCKER. He is a gentleman from Richmond.

The CHAIRMAN. Is he a son of the war governor?

Mr. TUCKER. Yes, sir.

The CHAIRMAN. He takes issue with you all on this question?

Mr. TUCKER. Not that I know of.

Mr. GILBERT. In view of what has already been said, it seems to me it would be a proper thing for this committee and a fair thing to the representatives of the company if we had now at this time submitted to us the views of the Navy Department as to what is necessary in this particular. It would have great weight with me, and I believe it would with every member of the committee. The Navy Department will have the burden of this thing, and their views would go a long way with me.

Mr. MAYNARD. After this hearing some day will be set for hearing the officers of the Army and Navy as to what should be done.

The CHAIRMAN. That was what I supposed this meeting was called for, and incidentally we ought to have the officials of the Treasury Department in regard to section 7, the coinage question.

Mr. BOWERSOCK. How much money has been raised?

Mr. TUCKER. Mr. Johnson, Mr. Myers, or Mr. Wool—any of those gentlemen—can tell you exactly what has been done.

I have here, Mr. Chairman, an unofficial report from the Treasury Department of the appropriations that have been made to expositions. It is a very good statement, and I would like to have the committee incorporate it in the hearing.

Mr. RODENBERG. That was published during the debate on the St. Louis Exposition matter?

Mr. TUCKER. I have seen that document, but I do not think it is as full as this statement is.

Mr. GILBERT. It occurs to me that that statement should be published as a part of this hearing—a statement of what the Government has done for former expositions.

The CHAIRMAN. I think it is available as a public document. If it is not available, we will incorporate it as a part of the hearing.

Mr. TUCKER. I think this is a fuller statement.

The statement referred to is as follows:

Synopsis of general legislation relative to the various expositions held in the United States, beginning with the Centennial Celebration at Philadelphia in 1876.

CENTENNIAL CELEBRATION AND INTERNATIONAL EXHIBITION OF 1876, PHILADELPHIA, PA.

Appropriated for Centennial buildings.....	\$1,500,000
(To be returned provided any surplus remained in the treasury of the Centennial board of finance after the payment of its debts.)	
Act of February 16, 1876 (19 Stats., 4).	
Appropriated for Government exhibits (to be expended by a board composed of the heads of the several Executive Departments):	
Act of March 3, 1875 (18 Stats., 400).....	\$505,000
Act of May 1, 1876 (19 Stats., 45).....	73,500
	578,500
For engraving and printing stock certificates, act of March 3, 1875 (18 Stats., 375).....	30,750
For admission of foreign goods, act of April 17, 1876 (19 Stats., 34) -	40,000
	2,149,250

OBSERVANCE OF THE CENTENNIAL ANNIVERSARY OF THE SURRENDER OF LORD CORNWALLIS AT YORKTOWN, VA.

Appropriated for expenses of joint committee of the House and Senate in arranging for the celebration, act of June 7, 1880 (21 Stats., 163).....	\$20,000.00
Appropriated for expenses of entertaining visitors from France, act of February 18, 1881 (21 Stats., 518).....	20,000.00
Additional appropriation for expenses in connection with the celebration, act of August 5, 1882 (22 Stats., 257).....	32,328.92
Appropriation for erection of monument at Yorktown, act of June 7, 1880 (21 Stats., 163).....	100,000.00
	172,328.92

WORLD'S INDUSTRIAL AND COTTON CENTENNIAL EXPOSITION, NEW ORLEANS, LA.

Appropriated as a loan to be repaid in full, act of May 21, 1884 (23 Stats., 28).....	\$1,000,000
Appropriated for Government exhibits (to be expended by a board composed of the heads of the several Executive Departments), sundry civil act of July 7, 1884 (23 Stats., 207).....	300,000
Appropriated for final payment of all indebtedness, premiums, and awards, sundry civil act of March 3, 1885 (23 Stats., 512).....	350,000
	1,650,000

JAMESTOWN EXPOSITION.

CINCINNATI INDUSTRIAL EXPOSITION.

Appropriated for Government exhibits, sundry civil act of July 7, 1884
(23 Stats., 207) ----- \$10,000

SOUTHERN EXPOSITION, LOUISVILLE, KY.

Appropriated for Government exhibits, sundry civil act of July 7, 1884
(23 Stats., 207) ----- \$10,000

WORLD'S COLUMBIAN EXPOSITION, CHICAGO, ILL.

Appropriated for Government buildings:
Public act April 25, 1890 (26 Stats., 65) ----- \$100,000
Act March 3, 1891 (26 Stats., 965) ----- 300,000
\$400,000

Appropriated for Government exhibits (to be expended by a board of
control and management):
Act of April 25, 1890 (26 Stats., 65) ----- \$200,000
Act of March 3, 1891 (26 Stats., 965) ----- 350,000
Act of August 5, 1892 (27 Stats., 362) ----- 408,250
Act of March 3, 1893 (27 Stats., 586) ----- 150,750
1,109,000

Appropriated for coinage of Columbian half dollars (which were
used in paying for labor done, materials furnished, and services per-
formed in prosecuting the work of preparing the exposition for
opening), act of August 5, 1892 (27 Stats., 389) ----- 2,500,000

Appropriated to reimburse the Treasury for loss of recoinage of silver
in Columbian half dollars, act of August 5, 1892 (27 Stats., 389) -- 50,000

Appropriated for Expenses of World's Columbian Commission:
Act of March 3, 1891 (26 Stats., 965) ----- \$95,000
Act of August 5, 1892 (27 Stats., 362) ----- 230,000
Act of March 3, 1893 (27 Stats., 586) ----- 211,375
536,375

Loaned to World's Columbian Commission and board of lady man-
agers, to pay committees, judges, and examiners (to be refunded
by World's Columbian Exposition), act of March 3, 1893 (27 Stats.,
586) ----- 570,880

Appropriated for international naval rendezvous and review and re-
production of Columbus's fleet, act of July 19, 1892 (27 Stats.,
250) ----- 50,000

Appropriated for branch post-office and clerical services and trans-
portation of mail to fair grounds, act of July 13, 1892 (27 Stats.,
148) ----- 63,000

Appropriated for 50,000 bronze medals ----- \$60,000
Appropriated for 50,000 vellum impressions for diplomas ---- 43,000
103,000

Act of August 5, 1892 (27 Stats., 389).

Appropriated for admission of foreign goods:
Act of April 25, 1890 (26 Stats., 64) ----- 20,000
Act of March 3, 1891 (26 Stats., 965) ----- 20,000
40,000

Appropriated for Indian exhibit, act of March 3, 1893 (27 Stats.,
634) ----- 25,000

Appropriated for naval exhibit, act of March 3, 1893 (27 Stats., 586) - 10,000

Appropriated for transporting steamer *Blake* to Chicago and exhibit
her with methods of deep-sea sounding, act of August 5, 1892 (27
Stats., 356) ----- 6,400

Appropriated for World's Congress Auxiliary, act of March 3, 1891
(26 Stats., 966) ----- 2,500

Appropriated for acknowledgment to foreign countries for partici-
pation in exposition, act of August 18, 1894 (28 Stats., 387) ----- 2,500

Appropriated for synopsis of department reports of exposition, act of
August 18, 1894 (28 Stats., 387) ----- 3,500

5,072,255

OHIO CENTENNIAL AND NORTHWEST TERRITORY EXPOSITION, TOLEDO, OHIO.

Appropriated for Government buildings, act of March 3, 1899 (30 Stats., 1348)-----	\$500,000
(Government's conditions not complied with and exposition was not held.)	

PAN-AMERICAN EXPOSITION, BUFFALO, N. Y.

Appropriated for Government buildings, act of March 3, 1899 (30 Stats., 1023)-----	\$200,000
Appropriated for general expenses of the exposition, act of March 3, 1899 (30 Stats., 1023)-----	300,000
Appropriated for payment of claims against the Pan-American Exposition Company, act of July 1, 1902 (32 Stats., 555)-----	500,000
	<hr/>
	1,000,000

SOUTH CAROLINA INTERSTATE AND WEST INDIAN EXPOSITION, CHARLESTON, S. C.

Appropriated to reimburse the Exposition Company for all expenses incurred on account of Government exhibit, act of January 21, 1902 (32 Stats., 735)-----	\$90,000
Appropriated for the payment of all legal claims against the said exposition company, act of July 1, 1902 (32 Stats., 556)-----	160,000
	<hr/>
	250,000

COTTON STATES AND INTERNATIONAL EXPOSITION, ATLANTA, GA.

Appropriated for Government exhibit (to be expended by a board of management), act of August 18, 1894 (28 Stats., 421)-----	\$150,000
Appropriated for Government building (same act as above)-----	50,000
	<hr/>
	200,000

TENNESSEE CENTENNIAL EXPOSITION, NASHVILLE, TENN.

Appropriated for Government exhibit (to be expended by a board of managers), act of December 22, 1896 (29 Stats., 477)-----	\$100,000
Appropriated for Government building (same act as above)-----	30,000
	<hr/>
	130,000

TRANSMISSISSIPPI AND INTERNATIONAL EXPOSITION, OMAHA, NEBR.

Appropriated for Government building and exhibits, including all expenses, act of June 4, 1897 (30 Stats., 26)-----	\$200,000
Appropriated for Indian exhibit, act of July 1, 1898 (30 Stats., 594)-----	40,000
	<hr/>
	240,000

LOUISIANA PURCHASE EXPOSITION, ST. LOUIS, MO.

Appropriated for Government buildings:	
Act of March 3, 1901 (31 Stats., 1440)-----	\$250,000
Act of June 28, 1902 (32 Stats., 445)-----	208,000
	<hr/>
	\$458,000
Appropriated for Government exhibit (to be expended by United States Government board):	
Act of June 28, 1902 (32 Stats., 445)-----	\$00,000
Act of March 3, 1903 (32 Stats., 1108)-----	100,000
Act of March 3, 1905 (33 Stats., 1165)-----	6,500
	<hr/>
	906,500
Appropriated for Indian exhibit:	
Act of June 28, 1902 (32 Stats., 445)-----	40,000
Act of April 21, 1904 (33 Stats., 207)-----	25,000
	<hr/>
	65,000
Appropriated for Alaskan exhibit, act of March 3, 1903 (32 Stats., 1108)-----	50,000
Appropriated for Indian Territory exhibit, act of March 3, 1903 (32 Stats., 1108)-----	25,000
	<hr/>
	1,504,500

Appropriated for general expenses of exposition, act of March 3, 1901 (31 Stats., 1444)-----	\$5, 000, 000	
(As to above sum, the Government was to share proportionately with the exposition company and the city of St. Louis in the distribution of any surplus funds that might remain after close of exposition.)		
Appropriated as a loan to the exposition company, to be returned by it in full, act of February 18, 1904 (33 Stats., 18)-----	4, 600, 000	
	<u>11, 104, 500</u>	
Appropriated for expenses of the Louisiana Purchase Exposition Commission, act of June 6, 1900 (31 Stats., 644)-----	10, 000	
Appropriated for expenses of joint committee of the House and Senate to attend dedication of buildings and grounds, act of March 3, 1903 (32 Stats., 1068)-----	\$5, 000	
For such committee to attend formal opening, act of April 27, 1904 (33 Stats., 412)-----	6, 000	
	<u>11, 000</u>	
Appropriated for transportation of model of Capitol to and from St. Louis, act of April 27, 1904 (33 Stats., 412)-----	3, 500	
To pay Laps D. McCord for services in preparing copy of State papers, etc., relating to purchase of Louisiana, act of March 3, 1903 (32 Stats., 1108)-----	1, 000	
	<u>11, 130, 000</u>	
For testing coals and lignites and timber of the United States on exposition grounds:		
Act of February 18, 1904 (33 Stats., 33)-----	\$30, 000	
Act of April 27, 1904 (33 Stats., 412)-----	40, 000	
Act of January 5, 1905 (33 Stats., 603)-----	25, 000	
To continue the testing of coals, etc., to July 1, 1906, act of March 3, 1905 (33 Stats., 1187)-----	202, 000	
	<u>297, 000</u>	
	<u>11, 427, 000</u>	

LEWIS AND CLARK CENTENNIAL EXPOSITION, PORTLAND, OREG.

Appropriated for Government exhibit, to be expended by Government Board, act of April 13, 1904 (33 Stats., 177)-----	\$200, 000	
Appropriated for Government buildings, act of April 13, 1904 (33 Stats., 177)-----	250, 000	
Appropriated for Alaskan exhibit (same act as above)-----	25, 000	
Appropriated for expenses of joint committee of House and Senate to attend formal opening, act of March 3, 1905 (33 Stats., 1246)-----	10, 000	
	<u>485, 000</u>	
Philadelphia -----	\$2, 149, 250	
Toledo -----	500, 000	
Chicago -----	5, 072, 255	
Cincinnati -----	10, 000	
St. Louis -----	11, 912, 000	
Portland -----	485, 000	
Omaha -----	240, 000	
Buffalo -----	1, 000, 000	
	<u>21, 368, 505</u>	
Yorktown -----	172, 000	
Charleston -----	250, 000	
Atlanta -----	200, 000	
Nashville -----	130, 000	
Louisville -----	10, 000	
New Orleans -----	1, 650, 000	
	<u>2, 412, 000</u>	
	<u>21, 368, 505</u>	
	<u>21, 708, 000</u>	
	<u>21, 368, 505</u>	
	<u>2, 412, 000</u>	
	<u>23, 780, 500</u>	

**STATEMENT OF MR. THEODORE J. WOOL, GENERAL COUNSEL,
JAMESTOWN EXPOSITION COMPANY, PORTSMOUTH, VA.**

Mr. Chairman and gentlemen of the committee: It has been my pleasure to appear before the legislatures of ten States, or the legislative committees of ten States, in the interests of the Jamestown Exposition, and I am glad to state that each of those States has adopted legislation looking to their participation. That has not been because I appeared before the committees. It has been because of a genuine interest in the historical significance of the event to be celebrated, and also because the State of Virginia, the old Commonwealth that has given so much to the country, has after a period of forty years succeeding the war felt it incumbent upon itself to inaugurate a great exposition, and because the Government of the United States has deemed the event to be celebrated of sufficient importance and magnitude as to be commemorated by perhaps the greatest naval and military celebration that the world has ever witnessed.

It is our hope that this celebration and this exposition may be held contemporaneously, and that one may be entirely worthy of the other, and that the two may be so correlated that they may show to all foreign nationalities, in acknowledgment of the invitation which has been accepted and their presence among us, that America is proud of the early pioneers who came over here amid dangers and wrought out this great country, and that we may at the same time show to our own people that we rejoice in the opportunity of making this celebration in the presence of such a large representation of foreign powers. We believe it is an opportunity that should be availed of by our country. We believe that each of the original thirteen States will be well represented at this exposition, and that certainly those States which were carved out of the original Northwest Territory will also be well represented at our exposition, and that possibly some of the far Western States and far Southern States will also be with us. I think we are in a position to-day to say that about thirty of the great States of our country will be represented at this exposition.

Mr. POLLARD. Can you give us the names of the States that have appropriated money for this purpose?

Mr. WOOL. The State of Virginia has appropriated \$200,000 in aid of the exposition. That was a gift to the exposition company to assist as a promotion fund. In addition to that there is now pending before the legislature of Virginia a bill to appropriate \$150,000 for the State's participation, and unquestionably that bill will pass.

The CHAIRMAN. That is for the State's exhibit?

Mr. WOOL. Yes, sir; the exhibit and buildings. The State of New Jersey has appropriated \$25,000. Their governor and the commission will be with us on the 22d of this month, Washington's Birthday, and if their visit is satisfactory they will probably report to their legislature, which will be in session until June, for a larger appropriation.

The State of New York has appropriated, as we term it, \$150,000. It is correct, however, to state that New York State has not actually made the appropriation. They made an appropriation of \$5,000 and appointed a commission to report back to this session of the legislature how the State should be represented. There can be no question

as to the appropriation, however, as soon as the report is made. The commission is now at work. It has the hearty support of the Democrats and Republicans alike in the legislature and the governor is interested in it. The State of Pennsylvania appropriated \$100,000.

Mr. POLLARD. What was the report of the committee?

Mr. WOOL. It has not made the report. They have been down with us, with the exception of the president, who was not able to be present. He will probably be down next week. The State of New York, so far as we know, will erect a building which can be used very nicely for a yacht-club building, and the citizens of New York will take a prominent part in the water feature. I do not know whether the commission will recommend that the naval reserves, or whatever marine institution they may have, shall participate. They will erect a magnificent structure, if all I hear is correct, right on the water front, and they do that with the design of having it available for the use of the ships that arrive there from New York State.

The CHAIRMAN. I understand that the State of Massachusetts will participate in the marine exposition. I secured the information from one of the commissioners who saw you the other day.

Mr. WOOL. The State of Connecticut has made an appropriation of \$26,000 and appointed a commission, and the governor of that State, with the board of control in the State, together with the commission, ought to be with us the 27th of this month to select the site for the Connecticut building and for such further information as they desired to get with reference to the exposition. North Carolina has appropriated \$30,000; Illinois, \$25,000. I understand that both of those States will increase their appropriations. South Carolina has just appropriated \$20,000 and appointed a commission. The State of Missouri—we reached there in the very latter days of their legislature and Governor Folk sent in a message recommending an appropriation of \$10,000 for the purpose of transporting the exhibit of the State of Missouri to our exposition. I understand that at the next session arrangements will be made for a State building.

Mr. POLLARD. No appropriation was made by the last legislature?

Mr. WOOL. Ten thousand dollars was appropriated. The State of Michigan passed a bill appointing a commission, as did the State of Wisconsin, and they have authorized a report at the next session. There is now pending a bill in the Georgia legislature appropriating \$50,000. In the State of Maryland there is a bill pending appropriating \$100,000, which will probably come before their committee next Wednesday. The State of Rhode Island has appointed a commission and the commission has recommended an appropriation of \$25,000. The State of Massachusetts appointed a commission and made the sum of \$10,000 available for their use, and the commission has reported back to the legislature that the invitation was accepted and that they would report later as to the form of cooperation upon the part of the State of Massachusetts. The commissioner, who was with us a few days ago, is of the opinion that it would be wise to have their ship *Enterprise* there as a part of the exposition, and he also favored the idea of erecting a building upon the ground, to cost not more than \$15,000, as a place of rendezvous.

Mr. MARTIN. What about the State of Ohio?

Mr. WOOL. A bill appropriating \$100,000 has been favorably re-

ported and passed by the senate of Ohio. There seems to be no question about Ohio's appropriation.

The CHAIRMAN. That is \$100,000?

Mr. WOOL. Yes, sir. In the State of Kentucky a bill is now pending appropriating \$40,000, and it looks as though the appropriation would be made. The State of Iowa commission has reported, recommending participation, to cast not exceeding \$25,000. That is my recollection. I think it is the opinion of the commissioners who visited those States that that will be done. I did not myself visit those States.

I want to state to you gentlemen that wherever the Government feels that an event is worthy of celebration and they can get the State and the people in the State to assist in the celebration in the manner that the Jamestown Exposition Company proposes to assist in this celebration the Government should avail itself of the opportunity.

It may not be amiss to give the committee some idea of the method of the State's participation. We feel as though we lack faith in our undertaking unless we impress upon the people of the country a patriotic impulse on account of the holding of this exposition. There has been a great deal of patriotic work done in connection with it already. The purpose of the States' participation is that each State shall not only use the building which it erects as a place of a rendezvous, but in that building there shall be certain rooms devoted to the various epochs in our national history.

For illustration, one room is to be devoted to the history of the settlement period, one room is to be devoted to the colonial period, one room is to be devoted to the revolutionary period, and another room is to be devoted to the national period. That each of these various rooms be turned over by the commissioners to the various patriotic organizations of men and women of the State, so that these rooms may be filled with such relics and such reminders of these particular epochs and periods as will be illustrative thereof and at the same time will teach the lessons of history, and in that they will relate especially to the part that that particular State has taken in the development of this Union. So that if you enter the New York State building you will see there the relics and object lessons which that State and its commission can get together for the amount of money it has at its disposal and the patriotic impulse it can bring to bear. There will be illustrated in one room the part the State of New York took in the early settlement of this country. In another room there will be illustrated the part that that State took in the colonial era of the country's history.

In another room will be illustrated the part that New York State took in the Revolutionary period, and in another the part that that State has taken in the national period. So that a person going through the rooms of that building will have history impressed upon him, not by reading its pages, but by seeing absolutely the objects of interest, which will incite an interest and desire to know further with reference to the history of the State of New York and the part that it has taken in the development of this great Union. And as one goes through the New York State building, the Massachusetts building, the Pennsylvania building, the Virginia building, the Georgia building, and the other buildings that will be erected there

he will thereby get a greater and broader idea of the history of this country, each State vying with each other State in friendly rivalry and competition to present to the people that attend this exposition on its own accord the great part it has taken in the development of the entire Union, so that we may, as it were, focus the minds of the people of the country back to the days of the early beginning, to the colonial days, to the days of the Revolutionary struggle, and then to the national period, so that a person who has visited that exposition may be able to exclaim, "Great is New York State," "Great is the State of Massachusetts," "Great is the State of Virginia," and "Great is the Union that is made up of these States."

In addition to this prominent idea which is being carried out by the exposition company, it is the purpose of each of the States by every bill that has been passed, with one or two exceptions, states that the building that is constructed shall be used as a place of rendezvous for the people and as a place for the exhibit of the historical relics upon the part of the State, so as to set forth the part it has taken in the development of this Union. There will also be a building constructed by the exposition company, in which certain space will be allotted to each State, so that each State will be in a position to set forth by object teaching its resources and its development. In other words, instead of doing as other expositions have done, placing a little bit of the mining exhibit here, and the agricultural exhibit there, and the horticultural exhibit in another place, and forestry in another place, so that a person would have to go around to ascertain comparatively what each State did in any particular line, our idea is to impress upon the public rather the greatness of the resources of the entire country, and in this building to allot certain space, so that each State may show the diversity and quantity of its resources and industries.

In other words, when a person takes the political geography and studies it, and he has come to a certain State, there are the boundaries of that State, there are the prominent cities in the State, and then the rivers and harbors and bays and other things, and there is set forth the productions of the State, what that State produces, what it is noted for. We propose, by objects, to teach the resources of each State comparatively, so that a person walking down these great aisles will pass by the space allotted to the State of New York and there will be shown, in the best manner that ingenuity can suggest, what New York does, what it stands for in the great industrial and commercial world, what are its resources, and what it is developing. Then, passing by that, to Massachusetts, to Indiana, to Illinois, to Missouri, and all the other States of the Union, so that the whole exhibit gives the person that visits the building an idea of the greatness of the entire country, the wonderful resources of the entire country, and the wonderful development of the entire country.

In addition to that, there will, of course, be congresses and conventions and auditoriums, one of which will seat 2,500 people, and another large convention hall which will probably seat 5,000 people, and at the same time there will, of course, be the usual exhibit building, in which manufacturers and others interested in displaying their productions will have an opportunity to do so upon the payment of a stipulated sum, just about equal to the cost of the original construction of the building. For instance, if it costs \$1.25 a foot

to construct the exposition building, the space will be charged for at the same rate—\$1.25 a square foot—or practically so.

If the Government of the United States feels that this event is worthy; that this event should be impressed upon the people of the country; if they feel that it is worthy of having the nations of the earth send their representations, both naval and military, here to participate with our military and Navy, why not utilize this opportunity, join hands with this exposition company inaugurated by the old Commonwealth of Virginia, and say to them, "Let us not only teach the people of this country the need of a great navy; let us not only have object lessons as to the value of that navy and the reason why we should prepare in the time of peace for war, but let us also at the same time teach them the history of their country, teach them of the great resources of their country, and fill their hearts with pride of country, so that they will go back educated and bigger and broader men." and it all can be done and done at a cost incomparably small in comparison with other great expositions.

We do not claim that we will hold an exposition that will rival St. Louis or Chicago in magnitude, but we do claim that we have a cool and salubrious climate, that we are especially and particularly benefited by nature, by land and water with deep water front lying in the immediate vicinity. We do claim that we have already laid out, and you gentlemen can bear witness to the fact, a magnificent site on one of the most magnificent roadsteads in the world. We do claim that a large number of the people of the country will come to see the naval demonstration and the military encampment, and that this opportunity is here presented of utilizing that opportunity for good.

I want to say another word, and permit me to speak personally. I am a northern boy, or man now, born in the great State of New York, and immediately after the close of the war, when 11 years of age, I moved to the State of Virginia. I feel as though I know the people of the North and that I know the people of the South, and I want to say that one of the reasons why I have thrown myself into this work and into this exposition idea is because I believe it will be a fitting capstone to the reunion which has been welded together, which was shown in the Spanish-American war, between the great sections of the country. I believe if the United States Government can, in its wisdom, see its way clear to adopt this bill which has been drawn that it will be an evidence to the people of the South that location is not regarded by the National Congress.

Now, Mr. Chairman, referring to the features of the bill, what do we ask? That the Government of the United States shall participate in this exposition, and we make the clear statement that the participation will be in keeping and in harmony and as the natural result of the bill which was passed at the last session of Congress. The States of this great country universally, where we have been able to get to them while their legislatures were in session, have with one accord adopted legislation looking to their participation.

Mr. RODENBERG. Have you made any estimate of the amount that you expect the different States to appropriate for representation at this exposition?

Mr. WOOL. I think it will run to about a million dollars in the aggregate. We can not tell absolutely, but I think so. We say that if

it is worthy that New York State and Pennsylvania and Massachusetts and Connecticut and Rhode Island should join hands with old Virginia in making this celebration a lesson to the people of the country it is right for the United States Government, with its vast resources, to also participate and to be represented in this exposition, so that the lesson which you teach by your Government exhibit may be there, the lesson which you teach by the Navy will be there, and the lesson which you teach by the Army may be there, so that the exposition may be something attractive in the nature of an entertainment to your foreign guests, and that your foreign guests may be in the nature of an attraction to the people of the country.

Mr. MCKINNEY. The different States are asked to provide State headquarters in the way of buildings and then to participate generally in the display of their resources, etc.?

Mr. WOOL. Yes, sir.

Mr. RODENBERG. Most of the States have also agreed to have an exhibit of their resources?

Mr. WOOL. Yes, sir; all of them.

There is another point that I want to say, and that is this: If the Government of the United States deems it wise that the people of this country should see the great naval display that will be there, the exposition company is simply the means by which the people are notified.

They are the publicity bureau which sends their agents and their emissaries out to the various States, which have their corps of writers sending out material to the various periodicals of the country, which will by the time that this exposition comes and this celebration comes inform the people of the entire world, and especially of the entire United States, that here is to be held a great naval and military celebration and a great exposition jointly, one under the auspices of the United States Government and one inaugurated by the State of Virginia and through the cooperation of the United States Government and the various States, and that they will have a double opportunity to come. Another thing is this: A great many people have never seen the ocean; a great many people have never been to the capital of their country. This will draw them. They will come by the way of Washington or else return by the way of Washington, so that the people from the inland will come to see the celebration, to see the exposition, to see the ocean, and to see the capital of this great country, and they will go back with bigger ideas.

Now, Mr. Chairman, all that we ask in this bill which Mr. Gardner says is \$1,340,000—

The CHAIRMAN. Is not that it, leaving out the currency section?

Mr. WOOL. I think so. All we ask in the way of appropriation is that the Government of the United States shall assist itself in the entertaining there and shall assist us in providing for a Government building and for a Government exhibit and also a building in which there may be housed exhibits from Alaska, the Philippine Islands, Porto Rico, and Hawaii. That is about the head and front of our offending, outside of such features as relate and have special reference to the matter of entertainment.

Now, then, you say these are arbitrary figures. They are. I admit that they are arbitrary, but I say this, study the situation and study what is to be done by the exposition company and is to be done

by the various States, and not considering what the Government has done with reference to other expositions of similar significance and importance, we say that that amount of money judiciously expended under the direction of the Secretary of the Treasury, we believe, after close study, that amount of money will enable the United States Government to be fairly and properly represented at a great exposition and a great celebration, and we believe if you reduce the amount it will not be the case.

We also say that it is proper that the pier which was alluded to by the chairman should be constructed by the Government. The bill of last year provides for a great encampment of the military of the world. It provides also for a rendezvous for the great navies of the world. The site which has been selected there is such that you would have to go out about a couple of thousand feet to get anything like deep water, and, secondly, we want to draw out the land entertainment and the land features as close to the naval feature as possible. At the same time the idea is to make a safe harbor, so that the small craft will have a safe place for a landing in transporting the officers from the ships to the shore feature on the land. We provide on this land a parade ground covering about 25 acres, and we provide an encampment ground that will cover practically the same space, and if more space is deemed necessary by the United States Army officers, who will investigate the matter, it can be had. Now, that is the reason why this pier should be constructed.

Another thing, we are going to have a vast number of foreign visitors. We are going to invite them here. We want to make a good showing. We want them to be impressed, and if a proper pier and landing is put there it can be made not only an object of necessary use, but also an object of great beauty, and consequently they will be impressed with the beauty and the symmetry of this exposition and this entertainment which is provided for our foreign guests by the United States Government, the State of Virginia, and the various States of this great country.

Mr. McKINNEY. Is it expected by the exposition company in furnishing entertainment to the visitors to have water carnivals, etc., within that inclosed basin?

Mr. WOOL. Of course there will be some entertainment within that inclosed basin, but we expect to use that basin especially for the small boats of all kinds that will take people out to visit the fleets as well as for the officers and men of the fleets visiting the land.

Mr. RODENBERG. Speaking of the construction of this pier, would that pier, if built, be a permanent structure and be of any great value to the Government for other than exposition purposes?

Mr. WOOL. I can not say that it would be of any special value to the Government unless the building which is constructed for the Government building should be utilized afterwards by the Government for some other purpose. Then it might be.

Mr. MAYNARD. Last year it provided for that?

Mr. WOOL. Yes, sir.

Mr. RODENBERG. This is simply to be a temporary pier. If the pier has no value to the Government as a permanent structure, naturally the Government would not be justified in going to any unnecessary expense in its construction.

Mr. WOOL. It is right across from Fortress Monroe, and it would be a most magnificent location, we have always contended, for any use the Government might in the future see fit to make of the pier.

Mr. BARTLETT. The officers of the Navy made a statement before the committee that at the present time there would not be any necessity for any barracks for the use of the Government.

Mr. MAYNARD. I understand that will develop later when we have the Navy Department here, that they are very much more anxious now about the pier than last year.

Mr. WOOL. I want to state just this, why we have drawn the pier in that way as it is there. The architects have done so. Of course it is understood that any pier that is drawn or any plan which it made would be subject to the approval of the Secretary of the Treasury or some other officer named in the bill. There is a necessity for some kind of a breakwater, as has been spoken of by the chairman on each side, forming a harbor. I disagree that \$3,000 would be sufficient.

The CHAIRMAN. I mean to make a temporary stone breakwater.

Mr. WOOL. You will find upon investigation that to have any kind of a proper breakwater and have it a real thing of beauty that it can not be secured for that amount of money, and I think you will find that out when you take the matter up with the Secretary of the Treasury.

The idea is this: That if the people will come there, we should endeavor to show them, as nearly as possible, the functions of the Government and what the United States is doing. To show them your Army and the armies of other countries, to show them your Navy and the navies of other countries, to show them your Light-House Service, your Life-Saving Service, your wireless telegraphy service, and to show them the great Government building, in which there is displayed what is doing along other lines.

Mr. BARTLETT. That has already been done pretty generally in the last decade?

Mr. WOOL. Yes, sir; but you have never done it for the last forty years, or nearly forty years, east of Chicago in any proper way. In other words, here is a great country, stretching from Maine to Georgia—

The CHAIRMAN (interrupting). What do you mean by saying "east of Chicago;" are not Atlanta and Charleston east of Chicago?

Mr. WOOL. Yes, sir; but Philadelphia is the only great exposition that has been held, except the Atlanta exposition, and possibly the Nashville exposition. I was speaking of that great section of country.

The CHAIRMAN. Did not the Charleston exposition have Government aid?

Mr. WOOL. The Government participated, but participation there was not—

Mr. BARTLETT (interrupting). There were \$240,000 of debts left over, and this committee made a favorable recommendation.

Mr. MCKINNEY. What you refer to especially is a display of these items which you have enumerated in regard to the Life-Saving Service and all that which has not been adequately illustrated?

Mr. WOOL. Yes, sir. When we become familiar with the subjects ourselves we have a great idea of thinking that other people are also

familiar with them. There are hundreds of thousands, millions of people in this country who do not know what the functions of government are or how they are carried out. This is an opportunity to illustrate them to them.

I want to say just one word with reference to the coinage. I am not speaking with reference to the effect it may have upon the Treasury, because I believe that the Government could stand \$2,000,000 more put in circulation; but I believe that if the Congress of the United States thinks it worthy to hold a great naval and military celebration and to invite all the world to come and join with them on account of this first settlement, and if it is worthy of the various States of this Union to clasp hands and properly commemorate this celebration, then I say it is worthy that it should be carried out by the United States, and a distinctive coin sent abroad throughout the land to carry its lesson of history and to make its impress upon the people of this great country, and as to whether or not it costs the Government \$800,000 to do it is not a bagatelle, that is not the question.

All nations in their history have commemorated some great event by some commemorative coin, something which can pass from hand to hand, and hence is taught a lesson which is of great value, and if it is worthy that we should commemorate this event for the people of the present generation, is it not also worthy that we should send out to this country an ornamental coin that will last for years and thousands of years and may be preserved as an evidence of the fact that we believe that this event should be commemorated in enduring form, not only for three hundred days, but forever, and, if possible, that will be a tribute to those hardy pioneers who braved the dangers of the sea and unknown land and planted the flag of freedom in this country which we are to meet in 1907 to rejoice over, to be proud of, and to shake hands with each other and bridge all chasms created by past differences, and so that we may get together and love our country with true patriotic fervor? I thank you.

The CHAIRMAN. Just to recapitulate some figures which I think you gave me, to see whether I am correct. I think you said you expected to get \$500,000 from your concessions?

Mr. WOOL. Yes, sir.

The CHAIRMAN. And that you estimated your gate receipts at \$1,500,000?

Mr. WOOL. That is an estimate.

The CHAIRMAN. And that you estimated the profits from the silver medals at \$800,000?

Mr. WOOL. Yes, sir.

The CHAIRMAN. That the State of Virginia is going to give \$200,000 to assist you?

Mr. WOOL. Yes, sir; they have already given it.

The CHAIRMAN. You have disposed of a million dollars in stock?

Mr. WOOL. Yes, sir.

The CHAIRMAN. Making in all \$4,000,000?

Mr. WOOL. Yes, sir.

The CHAIRMAN. Those are your sole items or principal items on the receipts?

Mr. WOOL. Yes, sir; that is correct.

The CHAIRMAN. Now, in your expenses for construction you estimate \$2,000,000?

Mr. WOOL. We find that it will cost, according to our revised budget, \$2,400,000.

The CHAIRMAN. Your estimate of the expense of operation was at that time \$1,000,000?

Mr. WOOL. That is an estimate.

The CHAIRMAN. Have you seen any reason to revise any of these estimates?

Mr. WOOL. Only as I have stated. It will cost us, according to my way of figuring it, \$2,400,000 to produce the exposition, of which \$200,000 is contributed by the State of Virginia and \$800,000 which would be contributed, if I may use the term, by the Government in allowing its credit on the coinage of 1,000,000 two-dollar pieces, and that \$1,400,000 would therefore have to be raised and financed by the exposition company, including the debt upon its stock. That would open the gates of the exposition and we would take off from the operation of the exposition \$2,000,000, \$1,000,000 of which would be used to pay operating expenses and \$1,000,000 of which would be used to pay off all debts we had at the opening of the exposition, including the subscription to the stock.

The CHAIRMAN. According to your figures you will have \$4,000,000 of receipts and \$3,400,000 of expenses. Therefore, at the end of the exposition you will have, if your figures are correct, \$600,000 plus whatever is the value of your real estate to apply to the redemption of the million dollars of stock taken by local persons?

Mr. WOOL. Yes, sir.

The CHAIRMAN. How much do you calculate your property is going to be worth at the end of the exposition?

Mr. WOOL. It would be a fair estimate at this time to say that the property would be worth from \$400,000 to \$500,000.

The CHAIRMAN. In other words, you will have \$1,000,000 to apply to paying back these gentlemen who have taken stock locally?

Mr. WOOL. That is correct. This is based largely upon estimates, but we hope that that will be the case. Still we are some of us prepared to lose, if necessary, if we can have the people of the country come and see us and go back and say they had a good time and that they saw what was worth being seen.

The CHAIRMAN. Whatever money is left over, whether it is a million or not, will be applied to the redemption of the stock?

Mr. WOOL. That is right.

The CHAIRMAN. Are you prepared to tell this committee who have taken up that stock and the conditions under which the subscription is made?

Mr. WOOL. Yes, sir.

The CHAIRMAN. Have you any printed material that we can examine and see the nature of the contract?

Mr. WOOL. No, sir. I can tell you in brief terms whatever is necessary.

The CHAIRMAN. Asking for the purpose of securing information, I understand that \$100,000 of your stock has been subscribed by the steam railways and steamboat companies that run from Washington to Norfolk. Have they prorated it among themselves?

Mr. WOOL. That stock was taken by the railroads.

The CHAIRMAN. And presumably they expect to get a good many advantages to themselves in carrying passengers to the exposition?

Mr. WOOL. It took a great deal of effort to get them to take the stock.

The CHAIRMAN. You do not expect they will get a profit from carrying the passengers?

Mr. WOOL. I think they will.

The CHAIRMAN. They are entitled to receive their money back after the exposition is over, provided you have any money. Do you not think it might be better to pay back the United States or the State of Virginia for their gratuity rather than to pay back these people already benefited?

Mr. WOOL. I will reply to your question by saying that our financial plan was such that the amount necessary that we should return to our preferred stockholders, who practically hold certificates of indebtedness of the country—the preferred stock is very much in the nature of a certificate of indebtedness. It has no voting power. It is called a preferred stock, cumulative and bearing interest, and I will say further that the people of our community were willing to take upon themselves a great exposition, with the labor and the necessary energy that is required, but they were unable to lose the amounts of their contributions that they made.

Mr. RODENBERG. From past experiences, I do not think that you gentlemen will be worried about the amount you are going to pay back to the stockholders.

Mr. WOOL. Even if that were the case, I can see very clearly why they should be paid back, rather than the Government of the United States, and that is this: It is your event, Virginia's event, and the Government's event. It is not the railroads' event. It is the Government's event, and consequently the United States Government will feel a richer reward if it can instill more pronounced patriotism in its people and love of country.

Mr. RODENBERG. Into the railroads?

Mr. WOOL. As to the railroads, we all know they are commercial institutions.

Mr. BARTLETT. And they would get the profit on this transportation whether they subscribed a dollar or not?

Mr. WOOL. Yes, sir.

The CHAIRMAN. Perhaps when we come down to the financial question, as to the difference between your preferred and common stock, I suppose that Mr. Myers is the gentleman who will be put on the stand?

Mr. WOOL. Mr. Myers is as competent to answer that question as anybody.

STATEMENT OF MR. O. C. BATCHELOR, OF GENERAL COUNSEL, JAMESTOWN EXPOSITION.

Mr. BATCHELOR. Mr. Chairman and gentlemen of the committee, in looking roughly over the figures which appear in the statement filed by Mr. Tucker, showing the expenditures of the United States Government in connection with other expositions, I made a rough

summary which amounted to more than \$20,000,000 that this Government has expended on this account, starting with the Philadelphia Centennial.

Now, all the arguments that have been adduced before Congress in support of these expenditures should count for us, and we claim that more arguments should not be needed to entitle Virginia to the event which Virginia proposes to celebrate to the small pittance which by comparison this bill appropriates for the Jamestown Tercentennial Exposition, and we will consider arguments which have heretofore been made and which have been effective in behalf of other expositions as in this record.

But, in addition to those arguments, we claim that we have considerations which entitle us to liberal treatment at the hands of the Federal Government.

Now, the bill which was passed last March, and which has committed this Government to a naval and military celebration—

The CHAIRMAN (Mr. Bowersock). Within certain limits, as prescribed?

Mr. BATCHELOR. I was coming to that feature of the bill, in order to answer the suggestion made by the chairman who just vacated the seat you now occupy.

The limitation here is on the amount to be expended, and not on the invitation which the President is authorized to extend. I want the committee to bear in mind the distinction between those two limitations, or, rather, I want it borne in mind that the limitation is upon the amount to be expended and not upon the invitation to be extended. The President's proclamation is to go to all the nations of all the earth under the terms of this bill, and it invites participation not only by the naval fleets of the world, but by the military organizations of the world.

The President was not told in his proclamation to say that you must limit your acceptance of this invitation in accordance with the \$250,000 appropriation which the bill authorized. The President's proclamation contains no such limitation, and while I have not seen Mr. Tucker's credentials with which he went to Europe, I venture the assertion that there is no limitation in them as to the extent of the participation which these invited guests are to make.

Now, let us look at this limitation which is in this bill—that is \$250,000. Only \$175,000, Mr. Chairman, is available for entertainment purposes, and as shown by the letters here of the Secretary of the Navy and the Secretary of War that is only sufficient to wine and dine the officers. It is an open secret that this \$250,000 was not the deliberate opinion or expression of anybody as to what would be needed to carry out the objects of this bill.

I know if the bill were read by a person who was not on the ground and knew nothing of the history of the fight which was made to secure the passage of this bill the presumption would be that there was a calculation made by somebody and as a result of that calculation \$250,000 was put into this bill, but if you gentlemen do not know it to be a fact, I know it to be a fact, because I was intimately connected with the preparation of this bill, and Mr. Tawney can enlighten you on that point, namely, that \$250,000 was put in the bill as a dernier resort to get the permission of the Speaker to recognize Mr. Maynard on a motion to suspend the rules for its passage.

The CHAIRMAN (Mr. Bowersock). There was something else in addition to that; there was another reason.

Mr. MAYNARD. You mean to meet the views of the minority of the committee.

Mr. BATCHELOR. I would like to know what was the other reason.

The CHAIRMAN. Perhaps we will take that up later.

Mr. BARTLETT. The majority of the committee reported a bill looking to the participation of the Government by an exhibit of \$275,000.

Mr. MAYNARD. A building at \$150,000 and an exhibit of \$200,000.

Mr. BARTLETT. The purpose of the majority of the committee last session was for the Government to participate in this exposition by furnishing a building and an exhibit; that was what this committee did.

Mr. BATCHELOR. I understand from Mr. Tawney, and he and I together prepared this bill at the last moment—I think I am not stating anything that Mr. Tawney would object to, but if so I ask that it not go into the record—Mr. Tawney's opinion was that if we would reduce it down to this small amount and get it through Mr. Cannon we would get an entering wedge, and when this bill was being discussed on the floor of the House it was openly charged by Mr. Littlefield that we were just getting our nose into the crib and the head would follow. That statement was not repudiated by us.

We expressly declined at the last moment when Mr. Littlefield said: "I will favor it if you will not come back." We said: "No." In the Senate when Senator Daniel was about to put the bill on its passage one of the Senators said: "Will you agree not to come back?" The Senator said: "No." So I say it was understood all around here by people who gave the matter any attention last winter that this amount was not an adequate amount, and that additional provision would have to be made later.

The CHAIRMAN (Mr. Bowersock). Might it not be well to say here that no man now can say within \$100,000 what amount will be necessary, no man knows to what extent foreign nations will participate in the maneuvers, and until that is known no man can say what is necessary for their entertainment?

Mr. BATCHELOR. That is very true. We can only do the best we can with the lights before us. It will be too late at the next session.

(Mr. Gardner resumed the chair.)

Mr. Chairman, that you may be advised of the present stage of this discussion, I have just explained that when this measure was passed last winter it was commonly understood on the floor of the House and stated in the discussion there that this was only the entering wedge.

The CHAIRMAN. Was that stated by the opponents or the advocates of the bill?

Mr. BATCHELOR. By both sides, or rather it was stated by the opponents of the bill and acquiesced in by the advocates. Mr. Littlefield and the gentleman from Nebraska, who is now in the Senate—Mr. Burkett—both, or one made the statement and the other indorsed it; that it was the entering wedge, or that we were just getting our nose into the crib and the head would follow, and I think the worthy chairman of this committee on a certain occasion, when he made a very happy address defending himself from an unwarranted attack, used the simile at the last session of the camel getting his head in

It might have been necessary or the chairman thought it was necessary. There was evidently a feeling in his mind that the camel might go further.

Now, whether this amount was thought by Congress last winter to be sufficient or not is not the question. The question for this Congress is, Is it sufficient? The hospitality of the Government is pledged, and pledged without limit, say what you will about the limit as to the amount of the entertainment fund. The acceptances of our guests, as I think Mr. Tucker has satisfied us, are going to be generous or numerous, and our hospitality must be generous. The Government's participation in this event you gentlemen, it seems to me, should consider in two aspects. First, as it respects the participation of foreign governments—that is, as it respects our invited guests—and, second, as it respects our own citizenship.

Mr. BARTLETT. One hundred and twenty-five thousand dollars for the official entertainment of the military and naval representatives?

Mr. BATCHELOR. Yes, sir; and then \$50,000 for the Army; making \$175,000 all told.

Mr. GOLDFOGLE. How much do you estimate that it will require to entertain properly?

Mr. BATCHELOR. Of course Mr. Morton and Mr. Taft, in their communications last winter, made figures of two amounts for the wining and dining of the officers, but I say in considering the duty of the Government as respects its foreign guests—

Mr. GOLDFOGLE (interrupting). What besides wining and dining—have you any idea?

Mr. BATCHELOR. We will come to that in a few moments. I want first to lay down what I conceive to be the considerations which should guide you gentlemen in the discharge of your duty in this matter.

Mr. BOWERSOCK. Where did you get your expression "wining and dining?"

Mr. BATCHELOR. That is my paraphrase for the entertainment of the officers of the navies and armies of the world.

The CHAIRMAN. I think you are greatly mistaken in assuming that it is confined to the officers. If I recollect properly the wording of the statute, it says "representatives."

Mr. BATCHELOR. It says: "Official entertainment of foreign military and naval representatives," but I adhere to this proposition as fundamental, our invitation is without limit. We can not control the acceptances, and therefore the last Congress made inadequate provision for the entertainment—call it entertainment—and it is the duty of this Congress to supply that omission.

Mr. GOLDFOGLE. And for that reason I ask you the question in all seriousness, have you any idea as to the amount that will be required in addition to that already provided?

Mr. BATCHELOR. That is just the point I am now discussing.

Mr. GOLDFOGLE. I am trying to ascertain what you regard as an adequate sum.

Mr. GILBERT. This bill does not carry anything additional for the purpose, and therefore it is not necessary to discuss it.

Mr. BARTLETT. You had better put something in the bill. This bill does not seem to provide anything additional for the entertainment of the official representatives at this exposition.

Mr. BATCHELOR. I am assuming that the estimates made last winter by the Secretary of the Navy and the Secretary of War, which would about aggregate \$175,000, will be sufficient for that character of entertainment, but there is in addition other forms and phases of entertainment necessary or proper, and those are provided for in this bill.

Now, gentlemen, here, it seems to me, is the fundamental consideration. Our guests coming here from abroad in response to the invitation which the Government has issued represent the might and majesty of the earth, and you gentlemen, in considering the character and extent of the entertainment you will afford them, must keep in mind the personnel of your guests, what they represent, and what they will expect from us as the richest nation of the earth by way of entertainment, and you must consider motives of policy as well.

You must consider motives of policy when you come to the determination of the question and on what scale we are to entertain. I say this, gentlemen, you can not afford to have 100 foreign vessels out there in this harbor, with perhaps 2,000 or 3,000 commissioned officers aboard, and no place for them to come ashore and intermingle. There must be provision for their reception on the land. I think the chairman concedes the propriety of the social rendezvous hall for the commissioned officers of the Navy. I think the chairman concedes the propriety of the social rendezvous hall for the commissioned officers of the Army, and the rendezvous hall for the men of the Navy and the rendezvous hall for the men of the Army. If I am correct in my supposition that much is conceded by the honorable chairman.

The CHAIRMAN. I concede the propriety. So far there is nothing improper.

Mr. BATCHELOR. That is all I meant to say. I am correct in the assumption that your distinguished chairman concedes the propriety or that it would not be improper——

The CHAIRMAN. You have it now exactly.

Mr. BATCHELOR. To have these things on the land. Then the principle for which we contend is conceded, and the only remaining question is how far we shall extend that principle. You admit you must go ashore to entertain. Shall our entertainment be elaborate is the next question.

Shall we have this pier, which shall not only serve as a convenience, but under the terms of this bill we are required to illuminate the pier, so as to make it a feature of special attractiveness when viewed from the fleets of the nations of the world. What would be better than to have a large electric sign above the arch with some proper inscription, "America welcomes the world?"

I think this little bit of ornamentation, if you leave out the utility of the pier, would be well worth the expenditure of a few hundred thousand dollars when this Government is on parade for the inspection of the nations of the earth. We must not forget that this is a sentimental exposition, and while that is so it seems to me it is perfectly proper to have such a celebration. We are immersed in materialism and commercial prosperity as never before, striving for the things that perish with the using, and it seems to me it is a proper time for us to pause and revert back to our early beginning of the heroic days of the nation and study anew the fundamental principles which have made the nation great, and certainly there is no more

appropriate spot in America to imbibe those lessons than the soil of Virginia.

Just as the other expositions have had their features, the cascades, the gardens, and the tower at Buffalo, so you will make this pier our feature of especial attractiveness, and it seems to me that the Federal Government when it has several thousands of foreign officers and a hundred thousand of foreign soldiers and sailors in attendance can well afford to spend a little money in ornamentation aside from the utility of the pier, which appears to justify its construction. Otherwise you will have no means of easy communication between your guests on the ships and on the shore, and you must remember your military guests will be in encampments on the shore, and your naval guests will be on the ships afloat, and this is the connecting link between the two.

Just one word more.

The CHAIRMAN. It is now twenty minutes after 1 o'clock, and in view of the fact that the gentleman is to continue for some time longer and there are questions to be asked, perhaps it would be better for us to take a recess and meet again at 2 o'clock.

Mr. BATCHELOR. My pleasure is the committee's pleasure.

Thereupon the committee took a recess until 2 o'clock p. m.

The committee reassembled at 2 o'clock p. m., in pursuance of recess taken, Hon. Augustus P. Gardner in the chair.

The CHAIRMAN. The committee will come to order. Proceed, Mr. Batchellor.

STATEMENT OF MR. O. D. BATCHELLOR, OF GENERAL COUNSEL FOR THE JAMESTOWN EXPOSITION COMPANY—Resumed.

Mr. BATCHELLOR. Mr. Chairman and gentlemen of the committee, for the rest of my remarks I shall assume that my argument, plus the concession of the chairman, has demonstrated the propriety of entertainment quarters on the shore for the officers and men of the Navy and Army who shall be in attendance as the guests of the United States; but I shall have to rely upon my argument alone, supplemented, however, by what those who addressed you before me have said, to demonstrate the propriety of the pier.

But assuming that we have the entertainment quarters on shore, and that we have the pier as the means of bringing naval guests and military guests into free and easy communication, to say nothing of the ornamental features, let us suppose that our guests have gone ashore; they have met in social converse, and they have been wined and dined. Assuming that that is the meaning of entertainment in the original measure, is that to be the end of their entertainment?

Now, whether the United States Government has anything there to show them or not, there is going to be other entertainment for them—the warpath, for example; but there is also going to be, as Mr. Wool has explained, a wonderful historical exhibit made by the States; there is going to be an exhibit of the resources of most of the States.

And the question comes, is it a legitimate part of their entertainment for the United States Government to make an exhibit there of so much of its resources as relates to the history of the country and to the Navy and Army branches of the Government, and those things which pertain to marine appliances? The Government exhibit, as defined in this bill, specifies the Life-Saving Service, the Revenue-Cutter Service, the Public Health and Marine-Hospital Service, the Army and Navy, the Light-House Service, the wireless-telegraphy service, the department of good roads, and the Bureau of Fisheries.

Mr. POLLARD. Mr. Chairman, before you take up that feature of it, personally I would like to have from the witness his views—and I think the committee would enjoy them, too—on this matter of entertainment—an expression of just what you think the Government should do in the way of entertainment aside from what has been indicated in the bill; in other words, just what entertainment you think the United States should furnish for our foreign visitors.

Mr. BATCHELOR. The bill states our view: First, a social building or place of rendezvous for the commissioned officers of the Navy in attendance; second, a like building for the commissioned officers of the Army in attendance; third, a like building for the sailors in attendance; fourth, a like building for the soldiers in attendance—a place where they may meet in social concourse; and fifth and sixth, a hospital for each branch—Army and Navy—you might say.

Mr. MYERS. There is only one hospital provided.

Mr. BATCHELOR. I thought there were two. Those buildings seem to us to be essential if the visitors are to come ashore.

Mr. MAYNARD. The soldiers will come ashore anyway.

Mr. BATCHELOR. Yes.

The CHAIRMAN. Have the foreign nations accepted the invitation to send the soldiery?

Mr. TUCKER. No, sir. I stated before that the invitation for the soldiery was not accepted to any such extent as it was for the navy.

Mr. GOLDFOGLE. Has there been any official acceptance of the invitations to send the soldiery?

Mr. TUCKER. Yes; Belgium has officially accepted the invitation to send a number of officers and troops. We had hoped to get a good many regiments, but I found in Germany and other countries that they had some misgivings about sending their troops to a foreign country. But I did have a very good assurance in England that a good detachment would be sent, but I do not think there will be anything like a commensurate representation.

Mr. GOLDFOGLE. Belgium has accepted, then?

Mr. TUCKER. Yes.

Mr. BATCHELOR. The bill requires, in addition, that our own soldiers, as many as can be spared, be encamped there during this period, and that the militia of the States be invited to encamp alongside the regulars, the idea being that they will be instructed in camp life.

Mr. POLLARD. May I ask you another question? What, in your judgment, do the exposition people think the Government should appropriate for this entertainment—how much?

Mr. BATCHELOR. The bill lumps the buildings and the sum and leaves the apportionment of it to the Treasury Department.

The CHAIRMAN. It lumps a good deal besides those buildings, though, where you find \$400,000 for the expenditure, if I recall rightly in that section.

Mr. BATCHELLOR. Yes.

The CHAIRMAN. You lump a good deal under it besides buildings. For instance, the building for exhibit of the products and resources of Alaska, and so on, and a building for the United States Government exhibit. That is all included in section 3, together with those entertainment buildings and the Bureau of Fisheries exhibit—all for the sum of \$500,000, without specifying what amount shall go to each item.

Mr. BATCHELLOR. I will explain that, as I proceed, Mr. Pollard. The buildings which I have enumerated, the entertainment buildings and the hospitals—

Mr. BARTLETT. You say these buildings shall not exceed \$500,000?

Mr. BATCHELLOR. I understand; but I say, in addition to the buildings which I have enumerated, the bill provides for the building to house the Government exhibit, the propriety of which I was discussing. It also provides for the building to house our insular and Territorial exhibits. All those buildings, it says, shall cost not to exceed \$500,000, and it says they shall be distributed as the Department shall deem proper.

Now, of course, the principal building items will be the exhibit buildings for the Government and for the insular and Territorial exhibits, so that, if you determine that these exhibits are proper, it follows necessarily that you will put up the buildings; so that, it seems to me, the matter for decision is, Shall this Government make an exhibit from the Departments enumerated in this section 1?

Now, when our guests go ashore and begin to look around, as they will, at what is on exhibition, that exhibition will be to them the exhibition of the United States Government. It matters not that we know that is not the case. They are invited to this spot by the United States Government. They consider themselves the guests of the United States, and they will not discriminate between a celebration on the water and a celebration on the land, as respects proprietorship.

We can not escape that. We can not send out literature and educate them to understand the difference. We can not get them to say, "This is a creditable naval celebration, which is all the United States Government is responsible for, and this is a discreditable land exhibition, for which the State of Virginia is responsible."

The impression they will take back home will be determined more largely by what they see on the land than by what they see on the water. Why? Those naval officers and men, if they stay on the water, will see nothing but water and ships—things that they are accustomed to seeing. They will take back with them no favorable impressions of this country or of its resources.

Mr. BOWERSOCK. Let me call your attention to the fact that heretofore the great burden of this exposition has been the naval feature. That has been the thing talked about more than all other things put together. Now you are at the other side and belittling that.

The CHAIRMAN. That is to draw the people as a great attraction. But now he is discussing the people who come on the ships. [Laughter.]

Mr. BATCHELLOR. I am talking about the duty of the Government to entertain and instruct the people who come. Do we want them to go back with an inadequate conception of this country? Do we want them to go back with their appreciation of our hospitality lessened—their estimate of it lessened?

Mr. POLLARD. I would like, Mr. Chairman, to have the gentleman's opinion on the matter I asked him before. He kind of gets away from my question. Maybe I can make myself understood better by prefacing my remarks this way: Suppose this committee should see fit to go no further than the act went that was passed by the last Congress?

Suppose we cut out all these other matters that you have inserted in this bill and simply provide for the entertainment of the foreign representatives of the army and navy that come. In that event, how much money do you think we should appropriate in addition to what has already been appropriated?

Mr. BATCHELLOR. That depends upon the definition of the word "entertainment."

Mr. POLLARD. That is what I wanted to get your idea of.

Mr. BATCHELLOR. I conceive it to be, first, the holding of such social functions as those in charge—the army and navy officers of this country in charge—shall see proper——

Mr. GOLDFOGLE. As, for instance——

Mr. BATCHELLOR. How many of these functions should be held, how frequently, how expensive the wines should be, etc., I am not prepared to say. I am not versed in that matter.

Mr. POLLARD. That is a matter I would like to have your opinion on.

Mr. BATCHELLOR. The only estimate on that, which I conceive to mean that, is what the Department submitted here last winter.

Mr. MAYNARD. You are not seeking to add to that entertainment?

Mr. BATCHELLOR. Not at all. I understood the Secretary of the Navy to mean from \$130,000 that that was the amount he intended to be expended on social functions, and that the Secretary of War intended to mean that he and his officers would spend that amount on military guests.

Mr. POLLARD. In other words, if the committee decides to go no further—that is, if the committee decides to make no further exhibit than what is already provided for; if we do not make exhibits for our foreign possessions and insular possessions, there is already enough money appropriated?

Mr. BATCHELLOR. Yes; that is my view, if you do not want to bring them on the land.

Mr. POLLARD. Suppose they come on land; you concede we must entertain?

Mr. BATCHELLOR. Yes.

Mr. POLLARD. If we do not go further and make these other exhibitions that you ask us to make, then we are furnishing sufficient money already?

Mr. BATCHELLOR. No; if they come on land——

Mr. GOLDFOGLE. How would you spend this amount of money in the bill already passed?

Mr. BATCHELLOR. My notion is of what the Secretary of War and the Secretary of the Navy had in mind. You can question them

further. But my notion is they meant those bills should go to the caterers and for supplies to be eaten and drunk.

The CHAIRMAN. As to those estimates which came to the committee last year, the Secretaries went somewhat into the cost of dinners. For instance, they said that the commander of the fleet, whatever his title would be, would be presumed to give such and such a number of dinners at such and such a cost, and the expenses of the various vessels were figured out that way. That is on the files and in the archives of our committee. Secretary Taft did not go into as much detail. That, I understand, was taken care of in our legislation last year. What the gentleman refers to is the caterers' bills as having already been provided for.

Mr. BATCHELLOR. Yes. I hope we have that issue clearly before us, of that much of the case clearly in hand; that the provision which has thus far been made provides not even for the renting of a dining room on the shore, and that those were functions which it was anticipated would be held on the ships. So that it brings us back to the pivotal point in the whole controversy—Shall we bring them ashore?

Mr. BOWERSOCK. It does not seem to me that this language conveys that idea. I do not think it should be left in that way. I think it is in the discretion of those who spend this money to spend it wherever they may desire to—on shore or off. If they take these people on shore they will entertain them there to some extent. They will have to get the cloth cut according to the goods they have, now and in the future.

Mr. BATCHELLOR. However that may be, I believe that the committee will sustain this proposition, that we ought to bring them ashore; that the shore part of their stay here will be the most enjoyable part to the seamen; that unless we do show them courtesies on shore they will be disappointed.

The CHAIRMAN. Now, let us get at the question; let us see if we can get at it this way. I think I understand what Mr. Pollard means. There is the picture [indicating] of the exposition grounds, with some view of the buildings which it is proposed to erect at Government expense, and others at the expense of the various States or of the exposition company. We will now assume that the officers of the fleet are not going to stay on board their vessels all the time unless you put a guard upon them to keep them there.

They having come ashore to see the exposition, let us suppose the United States Government has no exposition for them to see. Your company has one; the States have one; but the Government exhibit is omitted from that plan. Nevertheless there is no place on shore especially set off for the entertainment of our guests in the nature of a clubhouse, either for the enlisted men or the officers. Now, what entertainment other than the Government exhibit, as provided for in this bill, do you think ought to be furnished for them on shore? Do you think it should be a clubhouse? Do you think it should be a Y. M. C. A.? Have you any ideas as to how much that necessary entertainment will cost, on the assumption that we are going to leave out all Government participation in the land exhibit?

Mr. POLLARD. That is my idea exactly. That is what I was trying to get him to state.

Mr. BATCHELLOR. Mr. Myers, does our project put an estimate on the cost of social rendezvous buildings?

Mr. MYERS. Yes; we made an estimate on this.

Mr. BATCHELLOR. Have we that estimate here?

Mr. MYERS. We have not.

Mr. BATCHELLOR. Mr. Myers, the governor of ways and means, says that in figuring up the \$500,000 we made an apportionment of so much to the Government exhibit, so much to the insular and Territorial exhibit buildings, so much to the social rendezvous building for the Navy, so much for the Army, so much for the soldiers and sailors, and so much for the hospital. We have the details at home, the elements which make up the \$500,000. But, gentlemen, I do insist that this Government can not afford to have this exposition on the land and leave out a Government exhibit.

As I say, you must consider the bad impression which it must make upon these thousands of foreign guests that we will have, that the Government should not make an exhibit there, especially of the resources which relate to the character of the exposition, in harmony with the provisions of the bill which was passed.

Mr. HOWELL. The invitation, as I understand it, extended to these foreign powers did not say anything about an industrial exposition. They are simply invited to participate in a naval and marine exhibit.

Mr. BATCHELLOR. This is not an industrial exhibit which we are asking the Government to make. There is nothing in the way of agriculture except a forestry exhibit, and there is nothing in the way of a mineral exhibit.

Mr. HOWELL. The invitation did not include anything of that kind?

Mr. BATCHELLOR. No, sir; and we are not asking for an exhibit of that kind—simply an exhibit of matters that relate to the Army and Navy, and also incidentally to history. In other words, we are asking for the exhibit which comes within these three adjectives. Here is the title of the bill passed last winter:

An act to provide for celebrating the birth of the American nation, the first permanent settlement of English-speaking people on the Western Hemisphere, by the holding of an international naval, marine, and military celebration in the vicinity of Jamestown, on the waters of Hampton Roads, in the State of Virginia; to provide for a suitable and permanent commemoration of said event, and to authorize an appropriation in aid thereof, and for other purposes.

We are asking simply for the exhibits appropriate to these three adjectives, "naval, military, and marine." That is all we ask, and I am fearful that the minds of the committee have not been made clear on that point. There is nothing out of harmony between the express object of the bill passed last winter and the character of the exhibit which this bill provides for, except perhaps the matter of good roads.

Mr. POLLARD. Do you think the bill passed last session would include fisheries?

Mr. BATCHELLOR. I think a marine exhibition would include fisheries; yes. But whether it included fisheries or not—I think it would—an aquarium, which would furnish, it seems to me, so much of entertainment and instruction to our guests, would not be an improper investment.

The CHAIRMAN. How about a menagerie?

Mr. BATCHELLOR. We are going to have that.

The CHAIRMAN. Could you not supply the aquarium, too?

Mr. THOMAS S. SOUTHGATE, governor of exploitations and exhibits. The Government expended \$100,000 in transporting salt water

from Hampton to St. Louis to supply the fisheries exhibit at the St. Louis fair. It spent \$100,000 for that purpose alone.

Mr. BATCHELLOR. Replying to the query which the chairman propounded, as to whether we could not put up the money required for an aquarium, I say, No. I simply mean that we are already taxed by the plan and scope which we have outlined to our utmost limit, and when the chairman talks about our estimates of receipts from concessions and admissions and other sources leaving us a clear profit of a million dollars, he should remember that is all exposition talk and pre-exposition talk. [Laughter.]

The CHAIRMAN. It is not the chairman's talk.

Mr. BATCHELLOR. I mean it is our estimate, not yours. But if the chairman will find us a banker who will lend us the money we need for present construction purposes and take that estimate for the return of the money we will surrender this contest now. Of course we have visions of great income there, but the bankers do not see them as we do, and we need present financial aid. We must have it. Of course if we can not get it here we will have to borrow what we can in addition to what we have already raised and what our poor people have already subscribed. But that subscription list will be furnished you, and you will see from the size of the subscriptions that they do not come from wealthy corporations. The bulk of the subscriptions come from the poor people of that community. From our view of it, it is merely an accident of residence that has put that burden upon us.

It is not our celebration any more than it is yours. The birthplace of the nation happened to be in territory which is now a part of Virginia, and therefore the obligation was on Virginia to take the initiative and on the people of that immediate vicinity to bear the brunt of the undertaking; and I believe that our people have come up and responded nobly, considering their ability. But I do not look upon the contribution which the Government makes as a gratuity, especially since it has inaugurated this naval celebration.

Now, gentlemen, another reason why the Government should make an exhibit of such a character as this bill contemplates—and I pass now to the second division of my subject—is a consideration which should appeal to you in your determination of this question as respects our own citizenship. We down in Virginia think that perhaps the Government entered upon an unwise policy, or some of us do, when it acquired possessions in other seas. But whatever may have been our convictions upon that subject, and whether the Government acted wisely or unwisely in planting its standard on the other side of the world, it is now an accomplished fact, and with that fact the necessity for a navy comes. It is no longer a question of whether the United States is going to become a world power. Just the other day we had an illustration that she is now in every sense a world power—in the conference recently assembled at Algeciras concerning the affairs of Morocco, Africa. Then, gentlemen, with the necessity for a navy comes the necessity for men to man the Navy. We know that Japan's superiority in her recent contest was not so much because of the size and efficiency of her ships as it was because she had those ships manned by sailors who were inured to sea service—and she has a limitless reserve for that use.

Mr. BARTLETT. A good many of the ships were officered by Americans, as I understand. [Laughter]

Mr. BATCHELLOR. That is because there is no need for those to fight on our ships at this time. But if this little cloud that some of the politicians, I believe, are magnifying, of contemplated war between this country and Japan should grow, I expect we would need those men who helped Japan to help us, and there is no use trying to deny the fact that the need of this country is men to man the ships. If we had a war of any considerable duration, would we not have to take landsmen to supply the ranks of those who should fall or go down?

How are we going to stimulate a pride in our Navy except by bringing our young men from the interior to a knowledge of the Navy? And how can we better school them than in this exposition? The knowledge which they there get will produce pride, and pride will beget affection, and affection will beget a readiness to serve, so that, gentlemen, if this exposition, this naval celebration, were viewed from no other standpoint than the standpoint of the educational feature, in having the young men of our country informed regarding our Navy and recruiting our naval strength, it would be well worth the investment.

Now, people are coming to this exposition. The naval and military features will draw it, but the land exposition and the exploitation, which the land exposition is going to give to the Jamestown Exposition Company, will double that attendance; and the more attractive you make the land exposition, the more money you put on the land, the larger attendance you are going to have. The greater the expenditure on the land the greater the appropriation that will be made by our people for the entertainment of officers, because they will know that the size of the entertainment will depend largely on the investment on the land, so that if this is to be a training school, an educational institute, to instruct the youth of our interior regarding our Navy, the next important thing is to have as large an attendance as possible, and this Government exhibit of the Army and Navy, of the appliances of the Light-House Service, the Revenue-Cutter Service, the wireless-telegraph service, and the other items mentioned in the bill will interest the young men from the interior, will turn their thought and attention to the sea, and on that ground alone, it seems to me, the Government should make the exhibit we ask for.

The question was asked this morning if we had not already exhibited these things all over the country.

Mr. BARTLETT. I asked that; yes.

Mr. BATCHELLOR. That is true in one sense, in a limited sense, but it is not true that we have exhibited them literally all over the country. The exhibition at Charleston, S. C., was simply insignificant. I do not mean to say that the Government exhibit there was discreditable, but the result was insignificant, because of the small attendance. I do not recall that there was much of an exhibit at Atlanta.

Mr. BARTLETT. Two hundred thousand dollars for Government building and exhibit; that was in 1895.

Mr. BATCHELLOR. We know that the exhibits made West—at Chicago, Omaha, St. Louis, and Portland—were attended by only a small percentage of the people from the eastern half of the country, and

the fact is that most of the people in the eastern half of the country are ignorant of those exhibits.

Mr. GOLDFOGLE. Will they give more attention to an exhibit in the eastern part of the country?

Mr. BATCHELLOR. It being held in the eastern part of the country, and being distinctly naval, it will turn the attention of the eastern people to the naval exhibit on the shore; it being a naval and marine celebration, it will emphasize the exhibit on the land.

Mr. GOLDFOGLE. And therefore the necessity of making that a distinctive feature?

Mr. BATCHELLOR. Yes; that seems to me to be logical.

Mr. MCKINNEY. I would like to ask him a question.

The CHAIRMAN. Certainly.

Mr. MCKINNEY. Can you imagine a successful exhibition down there entirely confined to a naval exhibition? Suppose that exhibition were confined to matters outlined in the invitation by the United States; can you imagine that being successful without something on the land to extend it, and to assist in accommodation, and so on?

Mr. BATCHELLOR. I do not myself believe it would be a success. I do not believe it would be enjoyable to the men who came on the ships.

The CHAIRMAN. It is your intention to go ahead, is it not, whether we appropriate another cent or not?

Mr. BATCHELLOR. Yes; to go ahead and strain ourselves to the last limit.

Mr. MCKINNEY. You are going to have a land exposition?

Mr. BATCHELLOR. Yes; unless the stars fall. [Laughter.]

Mr. MCKINNEY. What you want, in addition to that, is aid in rounding out the exposition?

Mr. BATCHELLOR. Yes. We want the Government to be represented there as an exhibitor, just as the other States will be represented. We confine its exhibits to those articles and things which are appropriate to a naval, marine, and military celebration; and there comes the line of demarkation between this exhibit and the exhibit you made at the industrial expositions. And we want a historical exhibit also.

Now, whether you shall make an exhibit or not, insular and territorial perhaps, and of possessions, it is not a matter of so much concern to us, but it seemed to us that it would be a good governmental policy. It will help those possessions.

Mr. BARTLETT. I want to say this: It would help us get rid of some of them if we exhibited a little more than we did at St. Louis. I am willing to exhibit them very often if it will have that effect. [Laughter.]

Mr. BATCHELLOR. That is the first feature, now, that we ask the Government to exhibit within appropriate limits, as any other exhibitor. Then, secondly, we ask the Government, through its coinage feature, which we thought would be better than a direct appropriation, to bear a portion of the expense of creating this exposition, which primarily has fallen on the Jamestown Exposition Company. You gentlemen who have not given the matter thought in detail, can have no conception of the cost of creating an exposition covering three hundred-odd acres of land. The lighting plant alone will cost more than a half million dollars. We have to furnish the light, and power, and streets, and sewers, and all the sanitation.

The CHAIRMAN. Did I not understand that the city of Norfolk is going to build a boulevard and furnish a water supply?

Mr. BATCHELLOR. The city of Norfolk contemplates furnishing us water, but the mains and pipes we have had to construct.

Mr. BARTLETT. You have your own sewage system? You had to do that?

Mr. BATCHELLOR. Yes. We had to get rid of a lot of stagnant water.

The CHAIRMAN. Do you contemplate the installation of a sewage system?

Mr. BATCHELLOR. Yes; we have done that already. How could we insure the health of people who came there without it?

The CHAIRMAN. My attention was not drawn to it before.

Mr. MAYNARD. It is all completed——

Mr. BATCHELLOR. As most of you gentlemen doubtless remember without an explanation of it——

The CHAIRMAN. I did not see any elaborate sewage work.

Mr. BATCHELLOR. You may have seen the manholes.

Among the utilities and conveniences in which the Government is directly interested is that large parade ground, which we have fringed with 220 large apple trees, which were transplanted and which will be in full bloom when the exposition opens. It is estimated that 30,000 people can stand under the shade of those trees and watch the soldiers as they drill.

The CHAIRMAN. Now, Mr. Batchellor, it is 3 o'clock, and I think the committee has really heard enough on the general principles, as you might say, as to the necessity there may be for us properly to celebrate this event; and if, perhaps, you will more especially explain the individual features in continuing your remarks, we shall be glad. Explain more in detail the particular features you have in mind, if you please.

Mr. BATCHELLOR. I will give way to Mr. Myers to do that.

The CHAIRMAN. Before you sit down I would like to ask you one or two questions. This is the celebration of the three-hundredth anniversary of the landing at Jamestown. I rather think you had a celebration of the two hundred and seventy-fifth anniversary of the landing at Jamestown coupled with the surrender of Lord Cornwallis.

Mr. BATCHELLOR. I do not recall that there was any connection between the two transactions.

The CHAIRMAN. Let me put it this way: There was a celebration at Yorktown, to which the Government, at all events, contributed. There is to be a celebration at the spit of land which is represented in that picture. Which was the nearest to Jamestown Island in mileage, the Yorktown exposition or this, by an air line?

Mr. BATCHELLOR. The Yorktown exposition by an air line.

The CHAIRMAN. By the most devious road you can get what is it?

Mr. BATCHELLOR. The line of travel is from Yorktown 30 miles down to the site of this exposition here, and then 30 miles up to Jamestown. It is equa distant, but——

The CHAIRMAN. This is within 30 miles of Jamestown?

Mr. BATCHELLOR. Yes. Yorktown is 30 miles that way [indicating on a map], and Jamestown 30 miles that way.

The CHAIRMAN. The Yorktown exposition purported to be held 12 miles from the line at Jamestown.

Mr. BATCHELOR. No, sir. It is 12 miles from Jamestown to Williamsburg, here [indicating on map], and 7 miles from Williamsburg to Yorktown. That was simply the dedication of a monument in Yorktown. Of course we could not help having Yorktown down in Virginia [laughter].—

Mr. BARTLETT. And you could not help Cornwallis surrendering there? [Laughter.]

Mr. BATCHELOR. No; we could not help his surrender there. But I never knew before that there was any union of the two events in that celebration. I never understood that there was any emphasis or mention made of the Jamestown historical event in connection with the Yorktown celebration.

The CHAIRMAN. We can look that matter up later and ascertain definitely.

Mr. BATCHELOR. Certainly that was not a centennial, nor does that suggestion do away with the outlay that the Government has made for this Jamestown exposition. The nations of the earth, through the action taken last winter, were invited to participate, and it is not a question now of whether or not it would be a wise thing for the Government to do. This Government having entered upon a course, having adopted a policy which has no limit to it with reference to the extent or of invitations afforded, it is not a matter now for this Government to choose as to whether it has wisely adopted that course.

The CHAIRMAN. That is what I meant by the discussion of general principles.

Mr. BATCHELOR. I beg pardon. I was about to be led away. Are there any other questions, gentlemen? If so, I will be glad to answer. Mr. Myers asked me to hold the floor until he got back. [Laughter.]

Mr. TUCKER. If you will permit me, in the statement which I filed there was an appropriation by the Government at Yorktown for the monument. I think Mr. Winthrop, of your State [addressing chairman], made the oration.

Now, Mr. Chairman, I ask that the committee hear Mr. Myers. He is the governor of the ways and means committee of the exposition company.

STATEMENT OF MR. BARTON MYERS, GOVERNOR OF WAYS AND MEANS COMMITTEE, JAMESTOWN EXPOSITION COMPANY.

The CHAIRMAN. Before you begin I suggest, if it meets with your approval and that of the committee, in view of the fact that the time is passing on, that as much time as possible be given to details of the matter. We have already heard the argument covering the general question as to whether we should fittingly celebrate the occasion or not.

Mr. MYERS. Very well, sir. Now, Mr. Chairman, in providing in that bill for the items of governmental participation, we are not providing for any matters not heretofore thought of. The original proposition last year provided for a sufficient amount to meet the needs of this celebration. But as you will recall, it was finally deemed inexpedient by the committee at that time to pass the bill for more than it did finally provide for. We believe some of those items are

insufficient. We are not, however, seeking at this time to have you increase any of the items that are in the 1905 bill, but rather to provide for others that are necessary for the entertainment of the Army and Navy and for what we think is appropriate to governmental participation.

The fact will be developed later, from other directions, that the amounts in the 1905 bill are not sufficient. For instance, you will observe there that only \$25,000 is appropriated in that bill for the entertainment of the Army, whereas at Yorktown \$20,000 was appropriated for the purpose of entertaining the French visitors alone. Here the soldiers of all countries are invited. The appropriation for Yorktown was only \$162,000 in all, of which \$100,000 was for the monument, and \$20,000 was for the expenses of the committee of the Senate and House of Representatives, and \$20,000 was for the entertainment of the French visitors, and \$22,000 for other purposes. In relation to the item of \$500,000 to meet items enumerated in the pending bill for governmental participation, we made up a budget which unfortunately we have not with us to-day. It is in my desk at home.

We provide as nearly as we can, from information obtained from other expositions, for the cost of those buildings which we believe should be erected. We believe that for the officers of the Army and the Navy there should be suitable places of rendezvous, with reading rooms, smoking rooms, etc., and that the buildings for the soldiers and sailors should be more like those provided by the naval Young Men's Christian Associations. It will keep the men from drinking and gambling houses and give them innocent places of amusement and entertainment, and in the avoidance of drunkenness it will not only have a good moral effect, but may prevent trouble between the sailors of different nationalities who will necessarily come on shore; for whether it is a part of the plan of Congress or not, the sailors of foreign ships and of our own ships are going to come on shore.

It is a point that must be protected. On every ship that comes into port the first object of the sailor is to land, and his next object is to find a groggery or some other place where he may be led astray. The first object in this great aggregation should be to find a place where, as nearly as possible, we may counteract demoralizing influences and provide for those needs. Naturally our position, charged as we have been with the study of this thing for three or four years, has led us to go further into it and think out to a greater extent contingencies before they arise than you gentlemen have been able to do with so many other matters clamoring for your consideration. But we place them before you and call your attention to them; and I can not but think that when you come to consider them you will recognize their importance.

We have sought to be as economical in every matter connected with this exposition as possible, not losing sight of the fact that it is a great national event. It has been indorsed, as you know, by the President in two of his messages as one of the greatest importance to the country to be appropriately celebrated. Mr. Cleveland not only indorsed it in a very strong letter which was published in the papers, but he has accepted the position of chairman of the advisory board of 100 prominent men in this country, and has taken a personal interest in the matter. In his letter he states that he regards the event of such

national importance as to deserve the support of Congress and of the people of this country.

We have had an eye to the economy and have put every limitation possible upon the necessities of the situation, and at the same time have tried to recognize the necessities of the situation beyond the governmental participation. After providing for the officers and sailors, we have only asked you to make an exhibit there on behalf of the Government, such as you have made at other expositions, either to a more or less extent. We ask you to allow an exhibit to be made from the Smithsonian Institution and certain other Departments enumerated in the bill, with the exhibition of historical documents, and so on; and, last of all, we ask you for that coinage item.

It would have been better for us, perhaps, to have asked for an appropriation direct, as we did at the last session of Congress. We would rather prefer to-day to have you appropriate a million dollars. But we have put it in that shape, because of the point that was raised before—the necessity for economy in appropriations—and it is in the effort to meet the judgment of you gentlemen assembled here a year ago that we have sought to put it in a shape which will be more difficult for us to handle. We believe we can handle it, however, and we ask you to make the issue in that form instead of a direct appropriation, because we believe that is in line with your form of participation.

We have to provide there certain utilities that are as essential as the items you undertake in terms to provide for. It is just as essential, for example, that there should be streets and a sewage system and water and electric lights, and various other utilities of which you, representing the Government, receive your share in the entertainment of that part of this celebration which you have assumed, as it is to us.

Our electric-light plant alone will cost \$700,000. It is to light that pier, so as to lend eclat to the situation; to light the camps and the streets, and furnish power to the intramural railroad, and all other purposes for which light and power are used; and then there is the gas plant and the refrigerating plant.

Now, Mr. Chairman and gentlemen, it was recognized last year by yourselves and by a great many other members of Congress, as well as by the President and the Secretaries of the Departments here, who were heard on the subject, that this is a national event of interest which should be celebrated. The one argument that was raised here was economy, to which I just referred, as our reason for bringing in that request for coinage.

The other argument was that the United States Government, after its experience at St. Louis, could not afford to identify itself again with an exposition which might result in an invitation to foreign countries to send their exhibits here, which later on would have to be housed, with great additional cost, as had happened at St. Louis, and that therefore, whatever was done, the Government must be distinctly exempted from any liability for the exposition feature. We have accepted your verdict. We have provided for that matter. We have limited our exploitations in that direction by our own buildings, and that bill has been so framed and drawn in terms as to avoid any liability to the United States Government for anything that is done in connection with the exhibit on shore. We have made our exhibits

as limited as the importance of the occasion enables us to make them. We have made them largely historical and choice. The amount of floor space, compared with the great exhibitions held heretofore, will be comparatively small, while we believe it will be complete.

Now, I understand the suggestion that was made by the chairman was that the general argument be limited here and that we get into figures; and yet, before we pass entirely from the argument, I want to repeat again what has already been said, as we understand the President's desire and the desire of many who are prominent in naval and military circles, it is that the Navy should be exploited for the educational feature. There should be provision not only for the drawing of the crowd, but also for its entertainment. There should be hotel accommodations for the crowd, which may often run to 100,000 a day. We believe that to the limited extent to which the Government should be asked to contribute to the utilities in aid of our own efforts in this direction, the object sought, as we understand it, will be best accomplished from the military assemblage proposed on shore.

Now, I will be very much pleased to give any information that may be desired on any of these subjects. I believe it was indicated by the chairman that information was wanted from me as the governor on ways and means, and I shall be pleased to answer as to any point that may be suggested.

Mr. POLLARD. I would like to ask this question: What plan you have or how you expect to get this money into circulation—this million \$2 silver pieces? How do you expect to realize from them?

Mr. MYERS. Our idea was that we would use a good many of them in payment of our own bills, our own pay rolls and contractors.

Mr. POLLARD. If that is the case it will necessitate drawing a great amount of it into circulation, or into the hands of the people at once, will it not?

Mr. MYERS. I was going to say we thought we could arrange with a good many of the banks throughout the country to place a few in each and get them distributed in that way. We certainly could do that with the banks in our own immediate section. Then we propose to handle a considerable amount of them through the relic and coin men of the country. Our idea was that we could handle them in those three ways.

Mr. MAYNARD. You contemplate getting a premium on them?

Mr. MYERS. We contemplate trying to get a premium.

Mr. POLLARD. Do you not think the mere fact that a great many coins are going to be put into circulation will naturally result in their accumulating to quite a large extent in the banks, and as a result they will find their way right back to the Treasury for redemption?

Mr. MYERS. We calculate that the attendance there should be, perhaps, three or four million people—that is, if our admissions are a million and a half, it would indicate three millions of people at 50 cents apiece. A great many of those people, we believe, will carry those coins to all parts of the United States. They will be distributed all through the exposition and will be carried back as relics to the homes of the people who attend the exposition.

Mr. POLLARD. I know; but if you put in a provision that you shall receive from the Government not less than \$50,000 at a time—if that is done and the money is paid out in wages and salaries to men you

employ there, a great portion of it is going to be paid before the exposition opens, is it not?

Mr. MYERS. A portion of it will be distributed before the exposition opens, but we are going to try to get a premium on those pieces if we can.

The CHAIRMAN. Did I not understand you to say you would pay wages with them?

Mr. MYERS. I enumerated three ways, and that was one of them.

The CHAIRMAN. Do you expect those you pay as wages will be accepted at a premium?

Mr. MYERS. No; but we propose to deposit a considerable number of them in the banks and have them distributed later on. Our idea is that in these three ways—through the relic and coin men, through the banks, and through distribution by ourselves—to release them.

The CHAIRMAN. I was wondering how you expected to get a premium when paid out for wages. Would not the souvenir hunters prefer to take those that were not put out at a premium instead of those that were put out at a premium?

Mr. MYERS. I suppose they would. Those are largely matters of speculation and judgment. Mr. Maynard asked the question whether we did not surely expect to get a premium. I say we hope to get a premium.

The CHAIRMAN. I do not see that it is compatible with your purpose to use them in paying wages.

Mr. MYERS. At Chicago some of the Columbian half dollars were sold at a premium.

Mr. POLLARD. Is not that an unfair comparison from the fact that the half-dollar piece that was coined to assist the World's Fair at Chicago is of the same size and weight as our legal-tender half dollar that is in circulation now?

Mr. MYERS. I think the \$2 piece is more likely to be at a premium than the half-dollar pieces were.

Mr. POLLARD. Will not that fact result in their coming in for redemption to the Treasury in large amounts? The people will not want to use them as money as a medium of exchange as they did the half dollars in previous expositions.

It seems to me that the scheme you have will result in a very large per cent of those coins finding their way to the Treasury for redemption, and while your people may take the view that the issuing of 1,000,000 \$2 pieces on the part of the Government will not cost the Government a cent, yet—I do not, of course, mean to speak for the committee or for anybody else except myself—in my view it is going to result in the Government actually spending not less than half a million dollars, or perhaps a million dollars, paying it out in this form. It seems to me that would be so. If this money is paid in the form of wages to the laboring men they will have to live on their daily wage. That money will be turned in to the grocery and the dry goods merchant and to other merchants for the necessities of life, and they will rapidly accumulate.

The merchants will not want to use them for exchange over their counters on account of the fact that they are unwieldy and cumbersome and not suited for exchange generally, and the result will be that they will turn them in to the subtreasuries for redemption for other legal-tender money, and as the result of that the Government

will have to redeem them. It simply means that for every one that comes in for redemption the Government has to pay out a half dollar or 40 cents on every dollar. It seems to me that not less than 65 or 75 per cent of them, perhaps, will come back to the Treasury for redemption.

Mr. BARTLETT. How does the Government redeem silver dollars now? There is no law for the redemption of silver dollars now.

Mr. POLLARD. They have to do it, whether there is a law on it or not.

Mr. BARTLETT. They do not do it. You won't find out that they have done it at any time. You could not get silver dollars redeemed.

Mr. POLLARD. It is generally understood by everyone that the Government stands back of the silver dollar.

Mr. BARTLETT. There is no law on the statute book requiring the Government to redeem silver dollars.

Mr. POLLARD. Whether there is a law or not, there is no question but that the Government stands ready to redeem them. As a matter of fact, the Government does do it, and the mere fact that the Government stands ready to do it makes them circulate at par.

Mr. BARTLETT. Makes the silver dollar circulate at par because the Government redeems it?

Mr. POLLARD. Yes; the Government does redeem them.

The CHAIRMAN. The Chair calls attention to the fact, gentlemen, that this is not a discussion of the silver question. [Laughter.]

Mr. BARTLETT. If the Government does do it, it is in violation of law. [Laughter.]

Mr. POLLARD. That is simply my view of the process that it is going to take, and I think I am absolutely right.

Mr. MYERS. I do not believe that 20 per cent of them will ever come back, even though the Government stands ready to redeem them, because even if we pay them out to laborers and contractors there is a long way between the laborer and the United States Treasury. He has his grocery bill to pay, and the shopkeepers have their children, and they will go from hand to hand, and many of them will sift down into the bottoms of pockets as curiosities or relics of this Government, and as I said, the 4,000,000 people visiting the exposition will carry them all through the country, and if the exposition company should be compelled to let them go at par, or a portion of them, I think it will be a long way before they get to the Treasury, even 20 per cent of them.

Mr. GILBERT. This coinage scheme has appealed to me as possibly one that could be operated without much loss to the Government, if any. But in view of your statement as to the way you propose to dispose of the coins, I am inclined to revise my views. And I say this by way of suggestion only. It seems to me there ought to be some way found to so hedge you about, if the Government does do this, that you could not pass them out there in bushel lots, as you would do if you paid your laborers with them. I think the chairman is right. If they go out in that way, at that one point, they will be returned to the Treasury. I have been inclined to favor that feature of it myself, if the Treasury thought it was wise.

The CHAIRMAN. Perhaps subsequent witnesses may revise Mr. Myers's view of the question. [Laughter.]

Mr. GILBERT. It is not his view exactly that worries me, but it is the possibility of that being done that worries me. Is there not some way in which we could amend this law so that you could not do the thing you propose to do? I think it is a dangerous thing. [Laughter.]

Mr. MAYNARD. Having been somewhat instrumental in having the Jamestown Exposition Company incorporate in their bill this particular provision, it never occurred to me that the Jamestown Exposition Company at any time would ever pay their current bills with them, and I am surprised that it should ever have occurred to any member of the Jamestown Exposition Company.

Do not understand that I make any criticism of that, but it is an absolutely new suggestion to me, and one that I never contemplated. I thought that at the very worst contingency, in handling these coins that are worth \$2 apiece, there would not be a bank in the country that would not take them as collateral and lend \$2 upon them, and by that means pass them out one at a time during the whole exposition period and place them with the collectors and individuals. I never thought anybody intended to pass them out in the way of paying the current bills with them. If there is any danger of that, I think the committee ought to make it impossible. The whole idea as it occurred to me, and as it occurred to the distinguished member from Indiana (Mr. Gilbert)—a distinguished member from the Indiana delegation, I should say [laughter]—who brought the matter to me and asked me to introduce a bill to help Jamestown in this way, contemplated no such use of the coins. Our idea was that these coins should be so handled that they would bring a premium. It was never contemplated that the current bills should be paid with them.

Mr. GILBERT. I understand that the suggestion came to the distinguished member from Indiana, whom you have just named, from a woman living in his district, who thought the plan out.

Mr. MAYNARD. I thought it came from a man. [Laughter.] A man has been writing about it, and he suggested to me the idea.

Mr. GILBERT. It was an Indiana woman—the best woman in the world—who did that.

Mr. MAYNARD. Well, then, a woman wrote to a man or spoke to a man, and a man spoke to me, and I introduced the bill, and the bill provides for the scheme. It is difficult to trace in that way the building of the house that Jack built. [Laughter.] But perhaps that accounts for the wisdom of the views suggested by the gentleman from Indiana. [Laughter.] May I hope the gentleman from Indiana will be able to devise some means of passing these coins out singly? There is no necessity of paying any of them out as a premium.

Mr. POLLARD. Why could you not remove the legal-tender feature?

Mr. MAYNARD. Then they would not be worth \$2.

Mr. MYERS. Mr. Chairman, I indicated the three ways in which these coins could be handled—one through relic hunters and coin dealers and one through the aid of the banks, and one through the payment of bills. You will remember that I stated that the Exposition Company hoped to obtain a premium on the coins. It is not likely that we would pass these coins out in the payment of bills at a par unless we had exhausted all opportunity to place them at a premium. It seems to me that with a million of these coins the Exposi-

tion Company has the assurance there of half a million dollars profit, and, after all, is not the interest of the Exposition Company the best safeguard that could be thrown around that issue?

Do you suppose that we who have fought for this exposition for three or four years, and slept with it, and struggled with it, and now need the means necessary to complete it, are going voluntarily to allow a coin to go out now at \$2 if by the use of any possible ingenuity we can display we are going to get 50 cents more for it? We expect to get in touch with all of the relic hunters in the United States, and——

The CHAIRMAN. Have you any offers of premium from relic hunters in the United States in anticipation of legislation?

Mr. MYERS. We have not. Then we propose, as I suggested before, to use our banks as far as possible to borrow on those, and use them on the attendance. With three or four millions of people coming there and buying relics of all kinds, from pewter spoons up, we are not going to let the coins go before the exposition opens; certainly no more of those coins than may be necessary to the interests of this exposition to let go, because everyone will probably take back one as a relic of the Government and a souvenir of the occasion, and every coin thus put out is certainly forever withdrawn from circulation, so that I think there is no danger to the United States Government of many of these coins coming back.

The CHAIRMAN. One of the gentlemen indicated that in financing this company there was a difference between two different kinds of stock. Apparently there are some preferred shares and some common shares. Will you explain to the committee how this \$1,000,000 you have raised from local subscriptions is financed—what the conditions are, who are the subscribers, and so forth—what is this preferred stock, and what is the common stock, and what are the obligations, and are there any prior claims for debts or bonds, or anything?

Mr. MYERS. The preferred stock of this exposition bears 6 per cent cumulative interest, and may be issued for \$1,000,000. The actual amount sold is \$561,000. It bears 6 per cent interest and is not entitled to vote, and its holders are not entitled to hold positions in the directorate; but all the assets stand pledged for the redemption of that stock. The common stock——

The CHAIRMAN. That is a note at 6 per cent?

Mr. MYERS. It is an unrecorded bond at 6 per cent in its effect.

Mr. BATCHELOR. I want to correct an erroneous impression of that. That should be coupled with this additional statement, that the payment of all the debts of the company——

Mr. GILBERT. All the other debts of the company——

The CHAIRMAN. That is to say, \$561,000 out of your \$1,000,000 is preferred to the other \$490,000?

Mr. MYERS. There are 500,000 of common stock?

Mr. GILBERT. That is correct, Mr. Chairman, as I understand him.

Mr. MYERS. We understand the preference between the stockholders of the company is to have no reference to the creditors. The explanation made by Mr. Batchelor should go into the record for the enlightenment of any who are not familiar with that fact.

You gentlemen are doubtless familiar with the fact that an agreement between stockholders is like an agreement between partners in a

concern. It does not refer to the debts or affect creditors. It is an agreement between the stockholders whereby the common stockholders undertake to guarantee; in view of the fact that the preferred stockholders have no vote; that the latter have a guaranty of dividends and are first paid off from a distribution of assets, while the holders of common stock receive what is left and are entitled to vote.

The CHAIRMAN. Have you a million dollars worth of stock all together?

Mr. MYERS. We have \$561,000 preferred and \$500,000 common.

The CHAIRMAN. Is this \$100,000 of stock that has been prorated among the railroads and steamboat lines preferred?

Mr. MYERS. That is preferred.

The CHAIRMAN. In other words, they will get their money back, if it so be there is any money, ahead of the small subscribers?

Mr. MYERS. They will come in with all the other preferred stockholders, ahead of the common stockholders.

The CHAIRMAN. Can you state in a short way to this committee who the parties are who have taken up this \$561,000 of preferred stock, which will have a prior claim on all the proceeds, if any?

Mr. MYERS. You have referred to the railroads and steamboat lines as being the subscribers for \$100,000 of the stock. The electric lines have about \$29,000 of the stock. I give it from memory only. The residue is distributed in subscriptions ranging from \$100 to \$2,000, I should say.

The CHAIRMAN. The largest being \$2,000?

Mr. MYERS. The largest that I recall at the moment is \$2,000.

The CHAIRMAN. That is the preferred stock?

Mr. MYERS. Yes.

The CHAIRMAN. Now, that is given by private citizens not engaged in the conduct of the enterprise or in the leasing of office buildings to you?

Mr. MYERS. Entirely.

The CHAIRMAN. That is simply a case of public-spirited citizens, though small?

Mr. MYERS. Yes. A great many of them are working people and women.

The CHAIRMAN. And they do not expect to get any benefit from the exposition except their 6 per cent?

Mr. MYERS. That is right. Those subscriptions, the common and preferred stock, with the exception of perhaps the railroads and the electric lines, both as to common and preferred, are without any other consideration in the matter of benefits. There are no stockholders of this company who are interested in the leasing of any properties to the exposition company or privileges from the company.

The CHAIRMAN. I understood the people who sold you the real estate had subscribed some \$40,000. Am I right?

Mr. MYERS. All the land companies around Norfolk have subscribed in varying amounts, and that company amongst the others.

The CHAIRMAN. To preferred or common stock?

Mr. MYERS. That subscription is divided. They subscribed partly to common and partly to preferred.

The CHAIRMAN. That land company must have been given more than \$2,000 of preferred stock?

Mr. MYERS. I think their subscription to preferred stock is \$6,000, now that I think of it.

The CHAIRMAN. But all the land companies around there, lumping their subscriptions to preferred stock—all the land companies together have given how much toward the preferred stock?

Mr. MYERS. They have subscribed to both; the other land companies around there also. Here is the list:

Name of company.	Common stock.	Preferred stock.
Norfolk and H. Rds. Land Co.	\$5,000	\$27,000
Va. Realty and Invest. Co.		500
Norfolk-Holliston Co.	1,000	
Willoughby Beach Co.		125
South Ghent Land Co.		5,000
Colonial Place Co.		300
Atlantic Impt. Co.		220
Lambert Pt. companies.	2,500	
Tanners Creek Co.		250
Old Dominion Realty Co.		1,500
Kensington Co.		250
Norfolk and Willoughby Bay Co.		300
Old Pt. Comfort Impt. Co.		400
	8,800	\$7,775
Street railways:		
Norfolk Rwy. and Light Co.	10,000	10,000
Chesapeake Transit.	2,500	2,500
Norfolk and Atlantic Ter. Co.	20,000	5,000
Berkely St. R. R.	2,500	2,500
Newport News-Old Point Rwy. Co.	3,750	3,750
Citizens Rwy., Light and Power Co.	3,750	3,750
Norfolk, Portsmouth and N. News Co.	5,000	5,000
Roanoke R. R. and Lumber Co.		1,000
Total	47,500	\$20,000

The CHAIRMAN. Take all the land companies that have subscribed to preferred stock altogether. What is the amount of that?

Mr. MYERS. Thirty-seven thousand dollars.

The CHAIRMAN. And to common, how much?

Mr. MYERS. About \$9,000.

The CHAIRMAN. Now, can you tell us who the large shareholders are in the common stock?

Mr. MYERS. Well, the large ones are largely prominent in the management of the company.

The CHAIRMAN. That is, individuals like yourself?

Mr. MYERS. Yes. The largest ones are in the room here, varying from \$2,500 to \$8,000.

The CHAIRMAN. In other words, you, substantially speaking, have a mighty poor chance of getting any of your money back with \$561,000 of preferred stock at 6 per cent ahead of you?

Mr. MYERS. I would not like to say that, but it is largely speculative. [Laughter.]

The CHAIRMAN. As I understand it, they are preferred both as to principal holding and to interest, and you are deferred as to principal and have no interest coming to you, except whatever dividends there may be spreading over the whole?

Mr. MYERS. Yes. All my interest is common. Mr. Johnston's is common, and Mr. Wool's, and Mr. Cottrell's; those gentlemen who have given their time to this enterprise for the last three years. We are the bag holders. [Laughter.]

The CHAIRMAN. That is a remarkable fact, and I say it in all seriousness, that you gentlemen are unusually public-spirited in the matter. Now, this money that has been put in has already been paid in cash?

Mr. MYERS. It is being paid in cash, as it is called.

The CHAIRMAN. That is, you call such and such a percentage from time to time?

Mr. MYERS. Yes; every six months; it runs up to the 1st of January preceding the exposition opening.

The CHAIRMAN. That money has been used for the preliminary work upon the ground and roads and planting of trees?

Mr. MYERS. Yes; and the purchase of land, and—

The CHAIRMAN. And office expenses?

Mr. MYERS. Yes; and Mr. Tucker's expenses to Europe, and the expenses of the commissioners to visit the various States.

Mr. GILBERT. Is that stock all sold at par?

Mr. MYERS. Yes.

Mr. GILBERT. Both the common and the preferred?

Mr. MYERS. Yes.

Mr. COTTRELL. It is all oversubscribed?

Mr. MYERS. Our prospectus authorizes the use of a million preferred stock, but we have sold \$561,000 only.

Mr. HOWELL. Then it is optional what kind they take?

Mr. MYERS. Yes; the railroads have had their choice, and the individuals have had their choice.

The CHAIRMAN. They take the preferred stock unless influenced by public-spirited reasons to take the common. Is there any valuable speculation in the common?

Mr. MYERS. That is a matter of judgment. The common stockholder is the bag holder.

Mr. GILBERT. Would this so-called preferred stock be entitled to anything in any event above 6 per cent?

Mr. MYERS. No, sir.

Mr. GILBERT. Then some optimistic persons might prefer the common? [Laughter.]

Mr. MYERS. That is speculative. They take the risk of no interest in the hope of better interest.

Mr. BOWERSOCK. About what is the salary list now, if any? I do not mean the payment of expenses to the men traveling and working for you, but salaries.

Mr. MYERS. No salaries were paid for two years. Our salaries commenced a year ago—first with General Lee and the director-general, and it has been gradually increased until now our total salary list is, in round figures, about \$40,000 a year.

The CHAIRMAN. How much was it last month? You say it is increasing?

Mr. MYERS. Increasing to that point. It is now about \$4,000 a month.

Mr. GILBERT. That is, salaries alone amount to about \$4,000 a month?

Mr. MYERS. Yes.

Mr. HOWELL. Does your company have any other purpose or object than the holding of this exposition? Does it dissolve after the closing of the exposition?

Mr. MYERS. Our charter from the State allows us a limited time after the exposition is over to wind up its affairs. I forget now the exact time.

Mr. BOWERSOCK. How much land does the company own?

Mr. MYERS. Three hundred and fifty acres.

Mr. BOWERSOCK. They will own that at the close of the exposition as part of the security for this common stock?

Mr. MYERS. Yes.

Mr. BOWERSOCK. Would you have 350 acres belonging to the common stock if you pay your preferred stock?

Mr. MYERS. Yes; it costs us about \$362 an acre.

The CHAIRMAN. Have you any other obligations besides the two classes of stock?

Mr. MYERS. No.

Mr. GILBERT. Is the land paid for?

Mr. MYERS. No. There are some payments yet to be made from these calls. The deferred payments on the land will fall due when the calls are made. When the last note is paid there will be no obligations.

Mr. GILBERT. What percentage of your stock subscriptions are paid on call?

Mr. MYERS. We have collected about 70 per cent of the amount that has been called.

Mr. GILBERT. You can not count on as much as you have sold. The figures you have given us will be too large.

Mr. MYERS. No; we will collect close to the full value. A good many have not paid because they did not see the construction progressing to a degree requiring the money, in their judgment, and they thought they could use the money to better advantage themselves than the exposition company could. We have not pushed them more than we needed. Those who paid the early calls are more likely to pay the later calls. I do not think we will fall much behind. I understand Portland collected within 4 per cent of their subscriptions of stock. The fact that ours is distributed among people of small means, in small amounts, is an element of strength.

The CHAIRMAN. Are there any other questions to be asked of Mr. Myers by any member of the committee, or by any gentleman who is not a member of the committee? If not, put on your next witness.

Mr. MYERS. Mr. Chairman, I want to add one word more. We have 2,500 stockholders. It is not an argument of conclusive force, and yet, while this matter was being debated this morning, I was running over the list filed in the Treasury Department of contributions made since the civil war to expositions. I see that expositions in the North and West have had appropriated to them \$21,000,000, and that all the expositions held since the war in the South have had but \$2,400,000 appropriated to them—that is, about \$9 has been subscribed to the North for every dollar subscribed to the South.

This is not conclusive, gentlemen, but on the general proposition I want to say a word. I know that you gentlemen feel conscientiously—all of you feel conscientiously—that it is not a part of the Government—a function of the Government—to subscribe to expositions. It has been recognized by this Congress ever since the war as a function of government.

It has been recognized for the last forty years as a function of government, and during that period that section of country to which I refer has received but one dollar to nine—that is, one dollar in ten. They have borne their part. They have contributed to these expositions without a murmur, and we believe they have been beneficial. Now, it becomes our responsibility, as has been stated by Mr. Batchellor; by reason of our location we have to bear the brunt of this national exposition in the manner that has been indicated, and it is presented to you now to save us as far as you consistently can from the burden that is placed upon us, and we trust that you will have that in your mind and give it liberal treatment.

One other word. While it may be argued that it is not a function of government (a contention from which I differ), I must ask you to consider the function of government in its completed act. You may not say that it is the function of the government of a man's house for him to invite his children that have been married and scattered throughout the country to a home-coming once a year, where they may warm up around the paternal fireside and become better acquainted with each other and with each other's children—become a united band—but when that man becomes old and needy, or any of those children become needy and want the assistance of that united household, they who have been drawn together in these annual reunions receive the benefit of the completed act. Now, these expositions in the last forty years have been factors in bringing together the people of the States—drawing them closer to each other by their State participation in the respective expositions, and closer to the National Government.

The participation found its completion in such manifestations as occurred at the commencement of the Spanish war, when the United States Government made its call upon States to rally to its help, and, regardless of all past divisions, the same spontaneous response came from every section of our broad country, and there, Mr. Chairman, was the completion of what might in the beginning have been termed undue exercise of a governmental function. And when you look upon the obligation of our Government to its various sections, or what it may do for the various sections, think also of what it may call from the various sections to do in years to come.

As I say, we of the South have without a word and in cheerfulness been parties to this subscription of nine dollars to one to these family gatherings, and we ask you not to split hairs when we come here with great moderation responding promptly to the criticism made upon the form in which that bill was presented. We have come with a bill remodeled so as to recognize entirely your conscientious desire not to have the Government saddled with an unlimited liability which might crop up in future sessions—have so shaped this that you can consistently appropriate to meet the obligation as it comes to you, to suitably entertain the guests of the nation, to contribute any moderate amount by the seigniorage of that coin and the utilities which we will have to provide for the entertainment of your guests. Don't split hairs over it; report that bill. We have nothing more to ask of you. We are going to do our part.

When you cut down that bill last winter and returned it from the force of circumstances, we understood, because the policy of reform, or, rather, the policy of retrenchment, had been laid down for the

Fifty-eighth Congress, we said we could not promise not to come back, because we recognized the necessity to come back; but we do say here now with the budget prepared and the proposed participation of the Government, which is laid down in that plan and scope which is distributed here, you are separated entirely from further responsibility, and with all the wants we can foresee provided for by that bill. We have asked you for \$500,000 to provide those several buildings for the entertainment of the guests for the colonial exhibits, or so much thereof as may be necessary. It has been placed in the hands of the respective departments to spend, and, as Mr. Tucker said in his opening remarks, not one dollar of that \$3,340,000 goes into our treasury. It is to make complete a national celebration which from our closer study of the situation causes us to foresee will be absolutely necessary when an occasion arises.

I thank you very much for the considerate hearing of our committee to-day, and I will leave that with you gentlemen—we leave it with you gentlemen. We recognize your disinclination to legislate on matters that you believe are going beyond the legislative functions of the Government, but we submit that this, the second great event, second only to the discovery of the country, which was celebrated at Chicago, that this, the three hundredth birthday celebration south of Mason and Dixon's line, is not the time or not the one on which to draw the line in changing what has been the consistent policy of the Government. Our appropriations to St. Louis, an occasion of less event, our national appropriations were nearly \$12,000,000, as shown by this list—

The CHAIRMAN. Mr. Myers, how long did you say you had to settle up the affairs of this—

Mr. MYERS. I think it is twelve months.

A BYSTANDER. My recollection is that the bill says we shall have a reasonable time within which to settle it up. That is my recollection of the bill.

The CHAIRMAN. Would the preferred stockholders agree to an arrangement to hold the Government harmless to an extent sufficient to cover any loss that there might be to the Government in having these \$2 silver pieces returned to them?

Mr. MYERS. Our preferred stockholders would have to accept any obligation of the company which might be created.

The CHAIRMAN. Would your common stockholders, for instance, vote that the railroads and other people who might be getting an incidental advantage all through the exposition should not have the additional advantage of having the money they had prescribed paid back until the United States Government had paid back any loss which it might have incurred through being obliged to redeem for \$2 money which they had sold you for approximately \$1.20?

Mr. MYERS. I think our stockholders would have to accept any medicine that was given them, but at the same time it would be a little difficult. A date would have to be fixed up to which time the Government's liability would be determined.

The CHAIRMAN. That is why I ask you the question, What date was fixed in your charter? You can say that you would be willing to guarantee acceptance of that arrangement by those who have the voting power?

Mr. MYERS. Rather than that event should be inadequately celebrated.

The CHAIRMAN. And you think you could go ahead and collect such amount of your calls?

Mr. MYERS. I don't think it would affect the calls.

The CHAIRMAN. That is to say, the preferred stockholders would submit to having their claim for recompense secondary to the Government's claim for recompense?

Mr. MYERS. I think so. I think the necessity would be upon them to determine a reasonable date upon which the Government indemnity should cease.

The CHAIRMAN. That is a question of detail, the other is a question of principle.

Mr. MYERS. I would rather not see you resort to that, but if, in your judgment, the matter can only be handled in that way, our stockholders would have to submit. Of course the brunt would fall first upon the preferred stockholders, and second, upon the common stockholders.

The CHAIRMAN. It is very obvious that it would fall first upon the preferred stockholders, but I have either not caught the tenor of your remarks and the other remarks made to-day or else it is the preferred stockholders that will more directly benefit throughout the exposition than it is the common stockholders.

Mr. MYERS. That is right; yes, sir.

Mr. MAYNARD. I started to say that I had given a great deal of thought to that subject, and I have not really thought of very much else during the Congress except Jamestown matters, and I have given special consideration to this silver coin.

I hope the committee will not put on the Jamestown Exposition Company this provision, but in any event I do not believe that under any scheme for handling these coins that they would be presented for redemption, because if they were paid to me, if I were a contractor, I should think the Jamestown Exposition Company had presented me with a premium on just the number of coins that they paid me. I don't care how humble the man is who gets them, he is sure within a reasonable time to get a premium, and I don't believe there would any appreciable number go into the Treasury for redemption. I don't think that amounts to anything. I don't believe that \$50,000 worth of them will ever in our lifetime go into the Government for redemption.

Mr. TUCKER addressed the Chair.

The CHAIRMAN. Do you include Mr. Jackson in your delegation, or are we to hear him afterwards?

Mr. TUCKER. We would be glad to hear him—

The CHAIRMAN. I would be glad to have you close your case first.

Mr. TUCKER. I rose to say that we have no other gentlemen who desire to be heard by the committee, but we have here representatives of all departments of the exposition, and if any gentlemen present desire to ask any questions we would be glad to answer them, and I think we are in a position to answer any questions. I am not myself personally, but I have gentlemen here who can. We are very much indebted to you gentlemen for your very patient and kind attention.

The CHAIRMAN. You remember in the earlier part of the hearing it was understood you should submit so far as it seemed wise the contract under which your stock is subscribed.

Mr. MYERS. We will send you the prospectus and contracts that both classes of stockholders sign.

Mr. BOWERSOCK. Several statements have been made with reference to the sectionalism of this matter, not in a political sense, however, but the fact that the South has had so little benefit from the expositions that have been held. I do not agree with the statements that have been made along that line, and if this is to be published and go out, I would like to make a suggestion—

The CHAIRMAN. I think the committee would like to hear any of its members, because of course there is no question but what this will be printed for such uses as anybody may choose to put it to.

Mr. BOWERSOCK. For instance, the St. Louis fair, except the local benefit that it may have been to St. Louis trade and commerce, was of precisely the same benefit to one section of the country that it was to any other, and the entire expenditure was for one section of the country the same as for any other; and so the illustration of \$9 to \$1, or whatever the proportion may be, is not exactly what was intended, I take it, and if it goes out, I don't want that to go out without having been challenged.

Mr. BARTLETT. I mean \$9 to \$1. That proportion has been spent in those places where the expositions have been located.

Mr. BOWERSOCK. Because those cities were large enough to be able to support such an exposition as was given there.

Mr. TUCKER. And I will say, also, in your investigation of this matter, if there is any matter you want information about from the company, we should be glad to supply it.

The CHAIRMAN. Unless there is some other gentleman who wishes to ask questions, we will consider the hearings closed on House bill 12610, and will hear the witness who desire to be heard with regard to the negro development exposition.

STATEMENT OF MR. GILES B. JACKSON (COLORED), OF RICHMOND, VA.

The CHAIRMAN. Please state your name and occupation.

Mr. JACKSON. Giles B. Jackson, of Richmond, Va. I am a lawyer, and am director-general of the Negro Development and Exposition Company.

The CHAIRMAN. How many of you are there who wish to be heard?

Mr. JACKSON. At present I have no one but myself.

The CHAIRMAN. Do you think twenty-five minutes will be enough for you?

Mr. JACKSON. Yes, sir. I am here in the interests of this bill, and Mr. White is here in opposition.

The CHAIRMAN. We will first hear you until half past four.

Mr. JACKSON. Mr. White is opposing this bill, and if he is opposing it I don't want to say anything, because he's got no business here and he's got nothing to do with it.

The CHAIRMAN. We will hear you now.

Mr. JACKSON. Can't I be heard afterwards?

The CHAIRMAN. Proceed: we will let you have the opening.

Mr. JACKSON. Then, I will anticipate what he is going to say. Mr. Chairman, I am here—I came up here and didn't expect to be heard—I came up here to hear Mr. Maynard and these other gentlemen discuss the Jamestown Exposition proposition. I came along to hear them, and hence I did not bring any delegation, but I am very glad of this opportunity to be heard, and I think I can represent properly the interests which I am here to speak for, and they usually trust me to do the talking.

I have come to ask you if you will report this bill—that is, if you report any bill from Mr. Maynard. If you report any bill that Mr. Maynard presents here, after you have done that I want you to report this bill. I drew this bill myself, and I anticipated this for the very things that you would discuss here to-day about the responsibility of the Government, about the Government being liable for anything under the provisions of this act. I anticipated that and fixed it accordingly, so that the Government would not be liable.

We come asking you for an appropriation of \$250,000—simply \$250,000—to assist the negroes of this country in making a creditable exhibit of what they are doing, what they have done, and what they are going to do in the solution of the problems discussed concerning the negro.

We feel that since the white people, through these gentlemen who are appearing before your committee to-day and others, have made it possible to hold an exposition in Virginia to celebrate the three hundredth anniversary of the settlement of our country, that we should—the negroes should also have an exposition to show you what we have been doing and what we are doing and the progress of our race, and we thought if you would give us the money to put up a building we would go ahead and raise as much money as possible and make as creditable an exposition as possible, to show you what our race can do.

I make this argument: The negro is on trial, and evidence is being produced by the fellow who doesn't know anything about it, and we thought to produce, as the lawyers call it, the corpus delicti.

The point I want to make is this: When we who have gone there, when these people that Mr. Tucker has invited here from abroad come here, they ought to be shown the great things that have been wrought out by the negro, the great things the negro is doing in this country, so that they will go back home favorably impressed. And, Mr. Chairman, you who live back in Massachusetts, some of you who live back North and don't see a negro once a month, you will come down and see him. You have heard him discussed, you have heard that he is disfranchised in the South because he is incompetent—I am not talking politics, but merely as a matter of argument—you have heard about our Jim Crow cars, and you have heard it said that we have to have them in the South to keep the negroes to themselves.

Well, I must plead guilty to some extent—that is, that there is some excuse for them for having those Jim Crow cars for some of the negroes, but I am sure that if it could be done, they ought to make two divisions and put the bad nigger in one place and the good negro somewhere else, and not put them all together. [Laughter.] But they say we must all go together, and so I go with them. I want you to see, when you come down there, what we are doing; I want you to see our negro banks, banks in which millions of dollars are handled;

I want to show you the True Reformers' Bank, which, in the panic of 1893, when that great panic was on this country, in Mr. Cleveland's Administration, kept paying money out over its counter. I want to show you these things that we can point out to you, what colored people do, and show you those things so that you will go back to Massachusetts and other gentlemen will go back having a better impression of the negro.

Many of you have contributed to the education of the negro and some have told you that your money was thrown away, and I want you to come down here and see, as will be illustrated by this exposition, that you haven't made any mistake. I want you to see that all the negroes are not bad. While it is true there are some bad ones, they are not all bad, and the good ones ought not to be responsible for the others. I want you to see that the colored men in the South, because I live in the South myself, are accomplishing a great deal in lines of business. I belong to the National Colored Men's Business League, of which Booker T. Washington is president. I was vice-president of that organization for three years, and I happened to find out where the wealth of the colored people of this country is. It is in the South. They own 90 per cent of the wealth of the colored people; 90 per cent of the wealth of the colored people is south of Mason and Dixon's line.

I don't know just where that line is, but that wealth is south of Washington. I want you to come there and see that for yourselves. Now, in reading Mr. Maynard's bill I noticed a provision was made there for the Hawaiians and the Filipinos and these people that we have not seen very much of, and I don't blame him for making a provision for them; but all those people out there, the Filipinos and Hawaiians, are a people that have never hit a lick for the development of the resources of this country, and these colored people in the South have worked along with the white man and for the white man in the development of our country. In fact the white man didn't know the value of the country until the negro showed it to him. The negro has dug out the wealth of the southern country; he has shown him the value of the tobacco of the South, and I want you to give him credit for it; give him this opportunity. You have had expositions all over the country and you said they were expositions for the American people.

Well, I don't know whether I am an American people or not; there has been some disputing it, as to whether I am an American citizen or not, and I don't wish to decide the question now, because that is not the question at issue; but whether I have been an American citizen or not, I have never had an opportunity to exhibit to the world and to you gentlemen, and to exhibit to our own people, the colored people, what we can do and what we have done in any of the expositions that have been held so far; in all those expositions the colored man could not be found; he was lost, and from an industrial point of view he had to be lost, because the white man was at least three hundred years ahead of him in point of education and development, and he had piled up his industry so high—that is, the white man had built up his industry to such an extent that you could not find the little industry that the negro had accumulated in forty years; he could not show it.

There has been some suggestion in different quarters that the negro would be discriminated against in this proposition, because he would be put off to himself, and I think there have been a few kicks in New Yory and elsewhere on that account—they said the colored people would be by themselves. That is what we want; we want to be there by ourselves and have our exhibits so that those who go there can see at a glance what the colored people have done and what they are capable of doing. It will show you what marvelous progress we have made. Mind you, the negro could not have made this progress without the assistance of the white people. Down there the white people are good to the colored people, except at voting time. [Laughter.]

I have been practicing law for twenty years, and I have had this white man and that white man come in to me and say: "Save old Nat Lewis's property; save that man's property;" and they have paid me good fees, too, and they are friends of ours. I can go to the city of Richmond and go into Mr. Tucker's office or most any lawyer's office (and we have 500 lawyers there), and pick out any of his law books, and just leave my name there on a slip of paper, and I won't be arrested for larceny. We get along first rate, and the colored man is making money; he has made a lot of money and is progressing, but he has not made enough money yet to hold his exposition without your assistance. If the white people and these gentlemen can not hold their exposition without assistance from the Government, how can we be expected to do so? If you will give us this \$250,000 we ask for, we will then hold a fine exposition.

This money, we claim, does not belong to you, does not belong to us, or to the Government. Somebody may come along, and you may hear something about wanting to build an old folk's home with it. Why doesn't he go before the committee that has his bill and ask them to report it? He has been dangling around and dangling around for years, and he is obstructing me. He is acting like the dog in the haystack; he won't eat himself and he won't let me eat.

The CHAIRMAN. That is a little too personal, perhaps, and remember that this is being taken down by the stenographer.

Mr. JACKSON. Yes; pardon me. I am trying to get this \$250,000, and I get a little off and hope you will excuse me.

Mr. BARTLETT. May I ask you a question?

Mr. JACKSON. In a minute; yes, sir. I started to ask, however, that I wanted this money because it could be expended where 10,000,000 negroes would be benefited by it. When this money will be used to produce evidence of the capacity of the negro at Jamestown, it will speak well for the 10,000,000 negroes, but to take this and put it in an old folk's home at Washington would not be of very much benefit to the negroes of the country; you would have to live to get old before you could get any benefit of it, and down South when the negroes got old enough to be able to get any benefit from it they would be so old and feeble that they couldn't get up here to Washington; they wouldn't be able to get here, and, as a matter of fact, the only people that would get any benefit from it would be a few people around Washington.

Mr. BARTLETT. You say this amount is to be taken from money that is due the estates of deceased colored soldiers, which was in the

hands of the commissioner of the Freedmen's Bureau, and now in the Treasury. Do you understand that money to be there?

Mr. JACKSON. I know it is there—the money was in the hands of the Freedmen's Bureau and nobody called for it, and they kept it as long as they could, and they were getting old in the job, and they repaid it back into the Treasury of the United States, and it will remain there until Christ comes, or as long as this Government lasts, unless you legislate it out; and I think unless you give it to this cause—

Mr. BARTLETT. You say it is to be paid to the Negro Development and Exposition Company of the United States of America?

Mr. JACKSON. Yes, sir.

Mr. BARTLETT. Now, that is a corporation incorporated under the laws of Virginia for the purpose of making an exhibit at Jamestown?

Mr. JACKSON. Yes, sir.

Mr. BARTLETT. And you are preparing to make an exhibit at Jamestown?

Mr. JACKSON. Yes; at the same time with these white men.

Mr. BARTLETT. Is that company incorporated and organized?

Mr. JACKSON. Yes; and doing business the best they can.

Mr. BARTLETT. What is its capital?

Mr. JACKSON. The authorized capital is \$800,000.

Mr. BARTLETT. Has any of it been paid in?

Mr. JACKSON. Some if it.

Mr. BARTLETT. How much?

Mr. JACKSON. Between \$10,000 and \$12,000.

Mr. BARTLETT. That is very creditable. Has it been organized for the purpose of having an exposition at Jamestown with this other exposition?

Mr. JACKSON. Yes; to unite with the white people in commemoration of the three hundredth anniversary of the settlement of Virginia.

Mr. BOWERSOCK. Where is this money?

Mr. JACKSON. In the treasury.

Mr. BOWERSOCK. Where is the treasury?

Mr. JACKSON. The treasurer is Mr. R. T. Hill, the cashier of the savings bank of the Grand Fountain of the United Order of True Reformers.

Mr. McKINNEY. Do you know the amount of money in the treasury from this fund you referred to?

Mr. JACKSON. I have a statement here. It is nearly \$500,000, I think—over \$400,000.

Mr. McKINNEY. That is there unclaimed?

Mr. JACKSON. Yes, sir.

Mr. McKINNEY. About what proportion of the colored population of the country do you suppose you represent in asking for this to be used at that particular point?

Mr. JACKSON. I can answer that. The Negro Development and Exposition Company has made a canvass of the situation throughout the country, in every State, and we have a thorough organization. We organized this way: We had a great meeting last year of the National Baptist Convention, and there were 12,000 Baptists, colored men, and there we made a directory of all the leading colored people in this country, and we could get them all to participate in this exposition, and then, through the National Negro Business League, of

which Mr. Booker T. Washington is president, which organization meets once a year, we are also able to get in touch with our people throughout the country. We made a directory, through that league, of all the colored business men throughout the country, and we can put our fingers on every colored business man and woman, and we can within twenty-four hours do that, and we will not lose a single one.

Mr. McKINNEY. Can you ever conjecture the percentage that you represent of the colored people?

Mr. JACKSON. Yes; I can very handily do it. I said to you a while ago that at the National Baptist Convention we made a directory. There were 12,000 ministers there, and from them we got a directory of the best-standing people, those that were capable of doing anything or representing anything, and I claim to represent that people for this reason: I am in touch with them through those preachers, and then I claim that from the National Colored Business League nearly everyone of any note, except a few that oppose Booker T. Washington and some of the rest of us—for we have some opposition in certain quarters—but the rest of them I represent, I think, every last one of them.

The CHAIRMAN. Now, perhaps we will hear the other gentleman, and let you close after he is through.

STATEMENT OF REV. JAMES L. WHITE (COLORED), 2513 $\frac{1}{2}$ FIFTEENTH STREET, WASHINGTON, D. C., ASSISTANT PASTOR OF THE SHILOH BAPTIST CHURCH.

Mr. Chairman and gentlemen, we heartily indorse the Negro Development and Exposition Company, but we are opposed to H. R. 3114, which is introduced by Mr. Lamb, proposing to appropriate \$250,000 due the estates of deceased colored soldiers.

Our first objection is that it is not safe. It proposes to turn over a quarter of a million dollars of the people's money to a private corporation, with no supervision over it whatever. They can spend it as they please, and they don't make any supervision; they can take it and spend it as they please. That is our first objection—that it is not safe, that it is not safe to turn over that much money to a private corporation.

My second objection is, it is not a just measure. It is not just upon the ground that there were 37 States and Territories that furnished colored soldiers during the civil war, and to take the money that belongs to 37 States and Territories and put it in one State is not just. One State can not exhibit the development of the negro of the United States. It takes them all—all the colored people of the United States—to do that. That is my third objection—that one State can not exhibit the development of the negro of the United States.

My fourth objection is that the colored people of the United States are protesting against this. They are not willing for one dollar of this money to be spent anywhere in any State where there is any discrimination against the American citizens.

A few days ago I was in Boston, and there was a delegation there and they called on me. They knew I was there from Washington. That same delegation went to the legislature there and made some protest against the Government—at least they are strictly opposed to

using one dollar that is due the estates of deceased colored soldiers for this purpose. For my own part, now, if there could be \$1,000 given to each of the 37 States and \$25,000 for the putting up of a building down there, so that the colored people could exhibit their development as a race throughout the United States, I would be willing for that to be done, so far as I am concerned; but I am here to say that I speak for the colored people of this country (and I have traveled from Maine to Texas); and for the colored people who have signed petitions that this money should be made a sinking fund, and ask that a memorial home may be built for colored people from this fund, to be built in honor of these colored soldiers that fought in the civil war for the United States.

Mr. BARTLETT. Don't you think it is pretty well sunk now in the Treasury?

Mr. WHITE. No; because it went to the Freedmen's Bureau, and from there it was repaid into the Treasury. I have said just as much, I think, as is necessary to be said, and I thank you for your attention.

The CHAIRMAN. You know at the Atlanta Exposition some years ago there was a special exhibit showing the development of the negro?

Mr. WHITE. Yes, sir.

The CHAIRMAN. Did it meet with your approval, from what you have heard of it?

Mr. WHITE. Yes, sir; but the fund went from the same source, you see. They recognized that they were citizens. They did not recognize we were a side show, but it recognized we were citizens; it went out of the General Government—

Mr. BARTLETT. Not a dollar of it went out of the General Government.

The CHAIRMAN. My point was, Was that in your view a success; did it tend to increase the standing of the colored race in the eyes of those who saw it?

Mr. WHITE. I think it was a creditable exhibit, and I think this could be creditable if the 37 States could be brought in touch and a thousand dollars go to each State, and that be taken out as a commission.

The CHAIRMAN. You are not so much opposed to having an exposition there on the part of the colored people as you are to the way in which it is proposed to incorporate it?

Mr. WHITE. That is my strongest objection; yes, sir.

The CHAIRMAN. You would withdraw your objection, for instance, if—without going into the question of any money that might be due the estates of deceased colored soldiers—if we were to appropriate a certain amount of money to be put under Mr. Tucker with the express proviso that it should be used to furnish an exhibit of the progress of the negro; that would meet your views?

Mr. WHITE. Yes; and I would do all I could to assist. Excuse me, but you do not mean out of this particular fund?

The CHAIRMAN. Without going into the question of the source of the money, but from any money in the Treasury not otherwise appropriated.

Mr. BOWERSOCK. You spoke of petitions of protest having been sent in. Where are those petitions?

Mr. WHITE. Excuse me; I said I had traveled and got petitions of the colored people of the country to use some of that money to make

a sinking fund of it. I said there were protests sent here, and they said—if I may make a statement—that they were going to send them to the chairman of this committee. I don't know whether they have done so or not, but they had told me that in Boston a couple of weeks ago. They said they were going to send them to the chairman of the committee. They did not give them to me.

The CHAIRMAN. We have a protest signed by Joshua A. Crawford, on behalf of the Suffrage League of Boston and vicinity, against H. R. 1216. That does not seem to be the bill.

Mr. WHITE. No; that is not the bill. They had reference to the other bill.

The CHAIRMAN. No; this is simply a request for a hearing. But somebody has sent me a clipping showing that there appeared before a committee of the legislature, I rather think—I don't think they have sent any official protest to the committee.

Mr. WHITE. Well, they didn't give any to me.

Mr. McKINNEY. Is it your idea that the colored people would prefer that this money, if possible, should be used in establishing a home of some sort here in Washington?

Mr. WHITE. Yes; they have signed their signatures asking Congress for the last twelve years that it be used—so much of it, but not all of it—so much of it be used to build a memorial home in honor of the colored soldiers and the rest be invested as an endowment fund for the support of the institution, and not to spend it. According to the report I got from the Secretary of the Treasury on this last year, he reported there was \$333,000 of this fund went from the old Freedmen's Bureau, not taking into consideration prize money and other allowances, and the calculation is that altogether, taking into consideration the prize money and everything else, there would now be about \$500,000, and the proposition is to use \$200,000 or more and make it a sinking fund. I say I am willing to do anything to have an exhibit at Jamestown, but I do not want to take this fund.

Mr. McKINNEY. You do not want this money to be used in that way?

Mr. WHITE. No; I would not want it turned over that way to a private corporation; if I did want it used I would not be willing for that. I don't think it ought to be turned over to a private corporation for any purpose. I think it ought to be held in the Treasury, and this bill turns it all over to this corporation, and to give a bond in the eastern district of Virginia, and nobody has anything to say, and they don't make any returns; they don't promise to do anything but spend the money.

Mr. MAYNARD. You may rest assured that if the committee and Congress agree to the bill at all they would make proper provision for the accounting of every dollar of the money.

Mr. WHITE. I have no doubt of that, but I was speaking of the provisions of this bill as it is. All they promise to do is to spend \$250,000 to exhibit the development of the negro.

The CHAIRMAN. We will hear Mr. Jackson a very few minutes in closing.

ADDITIONAL STATEMENT OF MR. JACKSON.

Mr. JACKSON. Mr. White has not done as bad as I thought he would. I thought he had a petition as long as from here to the White House against my proposition, but he hasn't offered anything. It shows that the colored people are with me and not with him. I bring here to you the wishes of the colored people generally, and you have here these white gentlemen from Virginia who will vouch for it. I do not mean to be personal, but it reminds me of a dog lying on a haystack, not eating and not letting me eat. I have been trying for twelve years to accomplish something along this line, and not getting it. We say we will give you a bond; we will give you a trust company bond for this money.

We will make any kind of an accounting or report that you wish, but I do not think we will have much to report out of \$250,000; we will probably report that we have spent it. Now, we have an advisory board. Mr. White has come here and put a very poor premium on his race. He endeavors to show that his people are incompetent to handle this money. I said that the treasurer of this money is a man that has handled \$70,000,000 of negroes' money and made a report on it. The treasurer of this is a man that represents a bank that owns \$640,000 of property, paid for. And if you doubt our ability to properly take care of and account for this money, as I do not believe you do, I would refer you to the gentlemen who are connected with this upon our advisory board.

First on the list is Governor J. Hoge Tyler, ex-governor of Virginia, a man worth a million dollars. The next is Governor C. B. Aycock, of North Carolina, whom all of you know; Mr. Emanuel Raab, of Richmond, Va., a man worth two or three million dollars, a retired capitalist, he is on our board; then Mr. Charles Millhiser, of Richmond, another wealthy man, a millionaire; Mr. Samuel Seward, of Petersburg, Va., whose standing and reputation you all know of; and last, Mr. Fritz Sitterding, of Richmond, who has handled millions of dollars.

STATEMENT BY MRS. A. M. CURTIS, OF 1939 THIRTEENTH STREET WASHINGTON, D. C.

Mr. Chairman and gentlemen: I desire to submit the following reasons why I feel that the \$250,000 asked for by the negroes of the United States should be granted by your committee and by Congress. In the World's Columbian Exposition, the Midwinter Fair Exposition of California, and the St. Louis World's Fair I was the colored representative appointed by the United States Government, and I know the hardships better than anyone else which my race labored under. At none of these expositions or fairs was the negroes' work classed as his own, but only as an American citizen's contribution. In the Atlanta Exposition his work was classified, and the white race whenever speaking of the strides made by my race always refer to what they saw at the Atlanta Exposition.

This \$250,000 proposed to be expended from the fund in the United States Treasury, belonging to negro soldiers and sailors as unclaimed

bounty money, should be by this method given back to my race, because of the men who entered the Army under the names of their mothers, some under the names of their fathers, and some under the names which they were told by others belonged to them. When these brave men fell no one knew with whom to communicate concerning their death. When the trenches were dug they were dug by my race's now unidentified dead, and when the bones that were gathered up were placed under the Arlington monument, with the inscription "Erected to 5,000 unknown dead," I for one feel they were the bones of my race given a last resting place. But I need not speak of the loyalty of the colored race to this Republic. It is all too well known to you, and everyone knows that a call has only to be proclaimed and the race would again step forth to support the flag as they did before.

Now, I have personally called upon the governors of the States of New York, Pennsylvania, and Ohio, asking for contributions in behalf of the Negro Development Company, of Jamestown, Va., and from each one of these governors I have received a reply that if the Government at Washington would give the money to erect the building, they would give a proportionate share to make this negro display. More than that I could not ask, nor can your committee, because unless we can get that much we will have no building. The Jamestown Exposition Company has given us the ground to erect a building, and we now look to you to help us make a creditable exhibit to the world. Will you refuse us that much?

Do not let it be said that you turn down the appeal of 10,000,000 of your citizens who only wish to show what they have done since the years of their freedom. If there is no merit to be shown at Jamestown by the negro, it is simply because he has never done anything to merit recognition or to show his advancement, and I feel that a race which has produced such beacon lights as Frederick Douglass, Booker T. Washington; Du Bois, the writer; Henry Tanner, the artist; Dunbar, the poet, and Edmonia Lewis, the negro sculptress, who is now located in Rome, certainly should have this opportunity to show their work creditably at Jamestown.

The colored women of the United States will contribute their part, and will be organized into auxiliaries in every State. It may also be added that chautauquas will be held where the great speakers among our race will be invited to speak and thus encourage all to take an active interest in the exposition, and thus make it one of the greatest events of history where the negro's advancement may be seen by the world.

I thank you for your attention.

(Thereupon, at 4.45 o'clock p. m., the committee adjourned.)





HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

OF THE

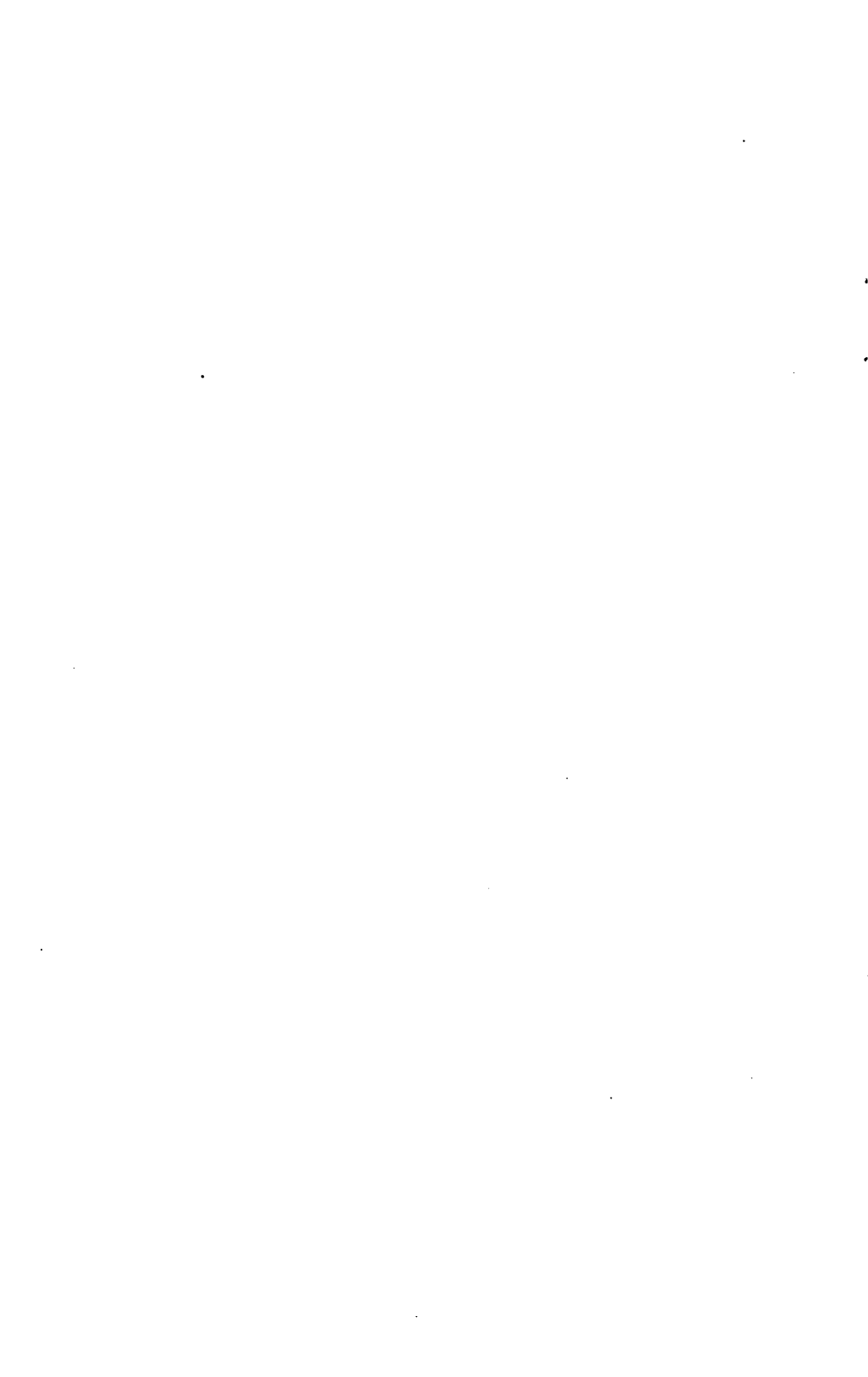
HOUSE OF REPRESENTATIVES

ON

HOUSE BILL 14316,
TO FURTHER PROTECT THE PUBLIC HEALTH.



WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1906.



**HEARING ON THE BILL (H. R. 14316) TO FURTHER ENLARGE
THE POWERS AND AUTHORITY OF THE PUBLIC HEALTH AND
MARINE-HOSPITAL SERVICE, AND TO IMPOSE FURTHER
DUTIES THEREON.**

**COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., March 3, 1906.**

The committee met this day at 10.30 o'clock, Honorable William P. Hepburn in the chair.

The CHAIRMAN. The committee will be in order. Mr. Davey, will you take charge of the order in which the statements of the gentlemen may be made? You are familiar with that.

Mr. DAVEY. I think the gentlemen have adopted some kind of a programme among themselves, and I will therefore introduce the chairman of the committee, Mr. Martin Behrman. He is the mayor of New Orleans.

Mr. STEVENS. What is the number of the bill?

Mr. DAVEY. It is the Mallory-Williams bill.

The CHAIRMAN. House bill No. 14316. That is the bill introduced by Mr. Williams, and the only one, I think, that is before this committee. Now, Mr. Behrman, we will hear you.

**STATEMENT OF MR. MARTIN BEHRMAN, MAYOR OF NEW
ORLEANS, LA.**

Mr. BEHRMAN. Mr. Chairman and gentlemen of the committee, I want just to thank you for giving us an opportunity to appear before you this morning. None of us have any desire to bore you, and it is our intention to take only a short while in presenting our views on this matter. But we come here to show you the interest we have in this bill, and to ask you for favorable action thereon. It means a great deal to us living in New Orleans, and we believe that the adoption of this bill will cure some of the troubles that we have been afflicted with.

I am not going to go into details, because I will be candid with you and say right here that I am not familiar with all the details of this bill, because my time has been taken up with other matters. But there are other gentlemen here on our committee who have studied this bill, who will ask the privilege of talking to you upon it. I take pleasure in first introducing to you Mr. Sanders.

STATEMENT OF MR. M. J. SANDERS, AGENT OF THE LEYLAND LINE OF STEAMERS, AND PRESIDENT OF THE CITY NATIONAL BANK, NEW ORLEANS, LA.

Mr. SANDERS. Mr. Chairman and gentlemen of the committee, I am going to be as brief as possible on this matter. I will not attempt any flights of oratory, because they are not in me. I want to say, by way of introduction, just one word, to point out the deadly earnestness with which our people in Louisiana view this matter. Our governor would have come along with us in addition to the mayor, but we have chosen 15 of the men, excepting myself of course, gentlemen who represent most of the progress and authority in New Orleans and in Louisiana, and I do not think there is any doubt but that the 14 men here do represent the most important interests in Louisiana and in New Orleans; and, as you know, New Orleans is the biggest city in the South.

I merely mention this to show that these gentlemen have come here at great inconvenience to themselves. We are hoping that we may be able to go back to-night by the earliest train, because, on account of our business at home, it is urgent that we should return home; but we would not have come up here unless we had been impressed with the absolute and pressing necessity for some favorable action upon this bill. This is not a jaunt or junket. There has been no desire for a pleasure trip. On the contrary, it is an expense and a great loss to many of the gentlemen who have come up.

The Chattanooga convention held in November last was, I think, as representative a convention of the Southern States as ever was held. There were present eight or nine governors, and there were present many Congressmen and Senators of the Southern States, and there were large delegations of important business men present. The sole object of that gathering was to discover some means whereby the Southern States could come together on this question of quarantine.

Previous to the outbreak of yellow fever last summer along the Gulf coast there has been an agreement between the four Gulf States—Texas, Mississippi, Louisiana, and Alabama—an agreement between their boards of health as to the amount of quarantine to be imposed and as to methods of quarantine on all foreign commerce. It was an agreement based on good faith—that is to say, if any of the boards of health knew of a case of yellow fever it was to be reported to the other States, the object being to prevent any serious hardship on commerce and to prevent the introduction or transmission of yellow fever from one State to another. For example, if a case came into Mobile, the object was to prevent it from getting into other cities and into other States; and if a case came into New Orleans, the object was to prevent it from getting to Mobile, or Galveston, or any other city.

That agreement worked very well until the first case of yellow fever came. Upon the outbreak of the very first case that agreement went to pieces and was utterly destroyed; and the position to-day, without mincing words, I may say, is one of absolute impossibility as to any sensible agreement with any of the Gulf States upon this vital question.

It would be unnecessary for me to explain to you, gentlemen, what a tremendous loss of comfort and convenience and of commerce results from the imposition of these shotgun quarantines. It is tying up our State within its own borders in a manner utterly destructive of commercial relations, and it is a serious menace to all the business conditions of the State. If it is a fact, as we fear it is, that it is impracticable and impossible for these States to come together with any agreement that would be of any value amongst themselves with regard to the control of quarantine and its methods of handling, it appears to us there is absolutely no authority in this country that can give us any assistance whatever except the Federal Government.

The Federal Government, for some reason or other, stands in the way to command more confidence than any of the State governments; I mean as regards the board of health administration. It is not necessary to discuss why, or whether this be so. I only express the conviction of myself and those that I have talked with that it is undoubtedly the case that the Federal health authorities are the only ones in the world in whom the Southern States at present have unitedly any confidence.

That was shown in the epidemic of the fever last year, when even our own board of health in Louisiana and the city board of health in New Orleans were doubted by the people, and the governor was at once asked to request the Federal authorities to take charge. It was not a question of prescribing financial means, because those were furnished by the New Orleans authorities. All the money the Government expended was paid out of the pockets of the citizens of New Orleans. But it was desired to get that authority—that corps in the Marine-Hospital Service—to handle this question and take it out of the hands of the local boards of health.

It is something that we do not like to confess. It is not a pleasant position to assume. But the moment that the Federal authorities took hold, that moment the confidence of our people began to be restored. We feel this is an unanswerable reason why the Federal Government should come to the assistance of the several States at this moment and take charge of the foreign commerce, so far as the quarantine of that commerce is concerned. They can make rules and regulations which can be carried out strictly; which can be recognized even by the boards of health of the various States on the Gulf, and we believe their taking this in hand will enable us to have a degree of close intercourse between the States which it would be impossible to have under any other method.

There is another reason why the Federal Government should take charge of this foreign commerce as regards quarantine, and that is if we want to eradicate once for all this question of yellow fever, which is a constant menace to the South, which is a menace also when the communication with the South comes only through the Northern and Atlantic ports, it must be done by a more comprehensive authority than State authority or the authority of a group of States, because otherwise the yellow fever patients can just as well get into the South from the Northern and Atlantic ports as they can through the Gulf ports. Yet the main difficulty is that they come in through the Gulf States, and we are asking now only or mainly for action with regard to the Gulf States, feeling that they will overcome at least the difficulty.

But an additional reason why the Federal authorities should take charge of it is that if we can, through the Federal authorities bring a certain amount of friendly pressure to bear upon the governments of the States and countries to the south of us, where yellow fever is inherent and constant, we can ultimately eliminate entirely the source of this disease, and eliminate entirely the necessity for these quarantine restrictions and regulations which practically destroy the commerce between the Gulf ports and the ports to the south of us. In other words, if there are certain cities in those southern countries that are the hot beds of yellow fever, we feel that a friendly suggestion from the Federal authorities here would be of weight as inducing those governments to clean out and eradicate. I do not mean any force or pressure beyond a friendly notice to these governments that it interferes with the friendly relations and the commercial relations which we bear toward them. No State or combination of States can take any such action as that, and yet that is the only way to finally eliminate and get rid of this menace. It is an expense, a burden, and a terror to the people of the South, and we therefore feel that this is essentially a matter that should be handled by the Federal authorities.

We have read this bill through very carefully. Doubtless it may have been amended since this copy was printed, as it is not even numbered; but we can not find therein any clause or provision that interferes in any way whatever with the boards of health of the Southern States, or that menaces what we in the South still cherish—the State rights of the States.

The CHAIRMAN. Is that bill you make reference to bill 14316?

Mr. SANDERS. My bill is not numbered; but it is no doubt the same bill, changed perhaps in some minor particulars.

Mr. DAVEY. There have been some little changes made in it, but not many.

Mr. SANDERS. That was sent to us a month ago. I presume the actual bill as it now stands has been amended. The whole bill appears to us, Mr. Chairman and gentlemen, to be merely a provision that the Federal authorities can establish and will establish quarantine stations at the various ports on the Gulf where they will control the commerce with foreign nations.

It also provides that if any State authorities desire to further detain vessels after they have passed the Federal quarantine the State authorities are at liberty to do so. But the essential advantage we would obtain, even if the State of Louisiana had the right afterwards to detain vessels after being passed by the Federal quarantine—the essential advantage would be having the Federal authorities intimately associated with and interested in all of this matter, and the confidence it would thereby give to the States along the Gulf.

For instance, if we know—if Mobile knows—that the Federal authorities are handling the quarantine at the port of New Orleans and the same authorities are handling the quarantine at Mobile, and also at Pensacola, or any other port on the Gulf, those States will be satisfied that the same regulations are being enforced and that the same notice will be given of any outbreak of yellow fever, and until the Federal authorities announce that there is danger in our midst the intercourse between the States will go on unreservedly and uninterruptedly.

We do not believe that would be the case if the board of health of Louisiana were to pass certain regulations of their own, and Mobile other regulations, and Mississippi other regulations, and so on. We fear there would be a distrust and a doubt all the time, and that any State or local quarantine that might be imposed by the State would inconvenience and tend to destroy commerce; and therefore we say that no other authority but the Federal authority can give us any assistance in this matter.

Mr. STEVENS. Is the reason why there can not be any agreement between the States, the existence of commercial rivalry between the Gulf ports?

Mr. SANDERS. I would not say that. I think the existing feeling is based upon a doubt which lingers in the minds of some as to the suppression of yellow fever.

Mr. STEVENS. That might be one of the reasons; could it not be?

Mr. SANDERS. I do not think myself that this is the reason, but I have heard it expressed that that is one of the causes. I may be wrong, however.

Mr. STEVENS. I notice that by section four there is no authority—there can be no authority, by Congress against a State detaining any person entering the State whom the States desires to exclude. Now, under the necessities of the condition, that will not exclude the State of Arkansas from having a shot-gun quarantine such as it had last year?

Mr. SANDERS. I do not think it would. But I am not a lawyer. However, I understand that the constitution of the State gives them a right, if they desire, to refuse admission to a man.

Mr. ADAMSON. You do not know whether any State quarantine calls itself a shot-gun quarantine, do you?

Mr. SANDERS. That is only a nickname.

Mr. ADAMSON. That is only where the people in a community that has not had a quick protection takes the situation into its own hands?

Mr. SANDERS. The local authorities impose certain regulations, but those regulations are the outcome of an absolute doubt or distrust of each other. They do not believe that each State will report immediately any outbreak of yellow fever in its midst.

Mr. ADAMSON. Are you not willing that the whole country shall protect the people from an epidemic without attempting to make any expression as to what a State may or may not do?

Mr. SANDERS. Certainly I should be.

The CHAIRMAN. Is not this the trouble—is it not the boards of health of the different States that have thrown impediments in the way of legislation of this kind?

I do not hesitate to say if there was not a board of health in the United States there would be no difficulty at all in getting a proper quarantine system. The gentleman asked you if it was not the rivalry of commerce that prevented it. I believe, myself, it is the rivalry of the boards of health, gentlemen “dressed with a little brief authority,” who do not want any infringement made upon that authority. That has been the way always, at least during the last twelve years that I have been a member of this committee.

Mr. SANDERS. I think all of the boards of health of Louisiana and Mississippi are in favor of this bill.

The CHAIRMAN. This bill would simply make the Government of the United States the buffer between the States and yellow fever, but it would give the Government of the United States absolutely no authority over these gentlemen who constitute the boards of health. It makes each one of them superior to the action of the Government and under this bill the Government could not inspect a vessel, it could not declare free from inspection a crew or a passenger list that any State board of health might not interrupt in their passage through the United States.

Mr. ADAMSON. I desire to say, so far as my State is concerned, that it is very much in favor of the Federal Government doing its duty, but not in favor of the Federal Government, in consideration of its doing its duty, trying to destroy the rights and powers of the State.

Mr. SANDERS. We can not see that it does that. It does not go as far as you, Mr. Chairman, perhaps might think advisable, or as perhaps some of us may think advisable. But we are merely asking now that the Federal Government will come and take charge of this foreign commerce, so as to give our State confidence in its neighbors; and if a State likes to impose an additional quarantine that is the business of that State, I do not think they will do any such thing, because I think they will have confidence in the regulations of the Marine-Hospital Service.

Mr. BARTLETT. That power of the State to control its own affairs in that way can not be taken away by the Government of the United States, according to the Constitution, as I read it.

Mr. SANDERS. The great point is that we are helpless by reason of the want of confidence between the people of the different States around the Gulf coast. There is no use in veiling that fact or attempting to hide it. We want some authority to come in and help us and take charge of the matter.

Mr. MANN. Is not this bill based upon your experience last summer, when you found that the State authorities did not have confidence in each other, and did not have confidence in the local boards of health, but apparently did have confidence in the national quarantine service after it took hold?

Mr. SANDERS. Yes, sir; there is no doubt of it.

Mr. MANN. You think that confidence is likely to continue if the Marine-Hospital Service and the Public Health Service had charge of the quarantine service?

Mr. SANDERS. Unquestionably. There is no official that has more confidence bestowed upon him in the State of Louisiana to-day than the representative of the Marine-Hospital Service there; absolutely none.

Mr. ADAMSON. Is not the real advantage the fact that the people realize that the Federal Government has more power to control the situation? It is not a question of money?

Mr. SANDERS. No; that is the fact. There is no doubt as to whether the cost of keeping the United States free from yellow fever should devolve upon any one State or city. It is commerce of the whole United States, and the whole United States is interested in that commerce; and the whole United States is interested in the freedom from disease that the country may enjoy; and we think it is essentially a matter that should be handled by the Federal Government.

Mr. RUSSELL. You seem to have studied this question very care-

fully, and this bill very carefully. I wish you would state to me what particular advantages you would derive from this bill—say, a city like New Orleans, in the suppression of yellow fever?

Mr. SANDERS. It would be the advantage that would come from the confidence we would have in the administration of the quarantine; the confidence that would be given to the administration of the quarantine in the State of Alabama and the State of Mississippi and the State of Texas, in addition to the confidence we would have in its administration in the State of Louisiana. In other words, we would believe we were being safeguarded by the very best authority and by an unbiased authority. The fear now is that we give way in our regulations, so as not to lose trade.

Mr. RUSSELL. To what extent do you understand that the provisions of this bill would permit the Federal Government to have the quarantine control?

Mr. SANDERS. I am not lawyer enough to know whether this bill gives the absolute authority that we want, but it seems to me to provide that they shall establish quarantine stations at the Gulf ports.

Mr. RUSSELL. Against foreign commerce?

Mr. SANDERS. Yes; foreign commerce only.

Mr. MANN. Is not this the situation, Mr. Sanders, from your viewpoint: If you have some sporadic cases of yellow fever in New Orleans, for instance, the people not only of New Orleans but elsewhere are afraid that the local authorities will suppress all information on the subject for fear of its injury to business?

Mr. SANDERS. Yes; that is the idea.

Mr. MANN. And if the service is in the hands of the National Government it will not be affected by such considerations, and whatever there is there will be made public?

Mr. SANDERS. Yes. We feel that it is entirely safe to rely on this fact, whatever may be the experience of the past, that there will be absolutely no suppression of information as to cases of fever either in New Orleans or the State of Louisiana in the future. If it has been in the past, we do not admit it. It is the most natural mistake that can be made in our interest, and in the interest of our commerce, and our own individual interests, and there is no chance of suppression in Louisiana in the future. But we do not know that the States contiguous to us do not yet believe that, and will not believe it until the Federal authorities have taken charge.

Mr. RUSSELL. Will you get anything more out of this than the greater publicity?

Mr. SANDERS. We do not want any more publicity.

Mr. RUSSELL. You spoke awhile ago about the fatal mistake as to the suppression of information of cases of yellow fever, which would be obviated by this bill. By my reading of the bill I do not understand what means on that point you get from this bill, and what benefit you derive from it, excepting that if the Federal Government handles it publicity will be given to the existence of yellow fever wherever it does exist.

Mr. SANDERS. Not only that, but public confidence will be given in the States around us.

Mr. RUSSELL. But will confidence be given unless the people who have the confidence believe that the bill confers on the Federal Government some power?

Mr. SANDERS. We read that it gives the authority, and instructs that the Marine-Hospital Service shall establish these stations and shall handle the foreign commerce.

Mr. BARTLETT. And it also provides for penalties.

Mr. ADAMSON. Then you do not mean to say that your own people would have more confidence in a statement of the Federal authorities than in yours, but that surrounding States would have more confidence in the situation?

Mr. SANDERS. Precisely. When I say "precisely" to your question, I refer more particularly to New Orleans and its surroundings. There are people in the interior of Louisiana who would probably have more confidence in the Marine-Hospital Service than in the board of health of Louisiana. But we do know that the other States will have more confidence.

It is a matter of confidence, gentlemen, and there is no desire to suppress any information with respect to the existence of yellow fever. We are determined to eradicate it, and we are determined to make New Orleans absolutely immune. We have started to work already, but we want confidence.

Mr. ADAMSON. The trouble last year, Mr. Sanders, as I understand it, was that your people were allowed to pass into other States.

Mr. SANDERS. They did not allow us to pass through. They shut us up. I will tell you one of the absurdities of it. If I wished to start from New Orleans to New York, I could go straight through the States to New York, but if I wanted to come back I could not come back through certain States without staying seven days in quarantine.

Mr. ADAMSON. Then you had no difficulty in going away from the States which would not permit you to return?

Mr. SANDERS. Yes. The boards of health would say, "We do not know whether you have been more than seven days away from New Orleans. If you have come from there, even indirectly, you may get the fever, or you may have the fever when you come back."

Mr. ADAMSON. Do you hope to get from this bill the power to go back?

Mr. SANDERS. Yes. We hope to prevent the imposition of foolish quarantine. Some of the quarantines are necessary, but some of them are foolish.

Mr. RUSSELL. As I understand your view, it is this: If the existence of yellow fever should be known in a State adjacent, and some vessel should be released by the local authorities from quarantine; for instance, if a person were to start toward Texas, and when he gets to the Texas line the local authorities would say: "He has been released by a local agent, and we have no confidence in the strictness of that service, and we will stop him," whereas if a Federal authority had passed him, the people of Texas would have confidence in it?

Mr. SANDERS. Exactly. If the matter were placed in the hands of a disinterested party, people would have confidence in it. The Federal official would be disinterested, and therefore the question of personal interest and self-interest would be removed, and confidence would be given.

The CHAIRMAN. If that is the case, what is the necessity of this provision in section 4?—

But nothing in this act shall be construed to authorize any vessel or any person released from quarantine detention by authority of said Surgeon-General to enter any State or Territory of the United States, or the District of Columbia, against the expressed objection of the lawful health authorities of such State, Territory, or District.

Mr. SANDERS. I can not tell you, sir, except State rights.

Mr. ADAMSON. Why not take out both of those provisions in that section?

Mr. SANDERS. If the bill passes Congress with that provision struck out, we would have no objection at all.

Mr. ADAMSON. If the bill will answer your purpose just as well by striking out this provision, that can not give or take away any of your rights?

Mr. SANDERS. We simply want the bill to pass Congress, and if you gentlemen see fit to eliminate this, we will not object.

Mr. MANN. Mr. Sanders, you are interested in New Orleans only as to yellow fever?

Mr. SANDERS. Mainly that. Last August our death rate was the lowest ever known, although we had yellow fever there in New Orleans.

Mr. MANN. Has your committee ever considered in any way the question of bubonic plague?

Mr. SANDERS. Our municipal authorities have taken charge of that. We do not presume this will sweep away our board of health. If you gentlemen do not put in bubonic plague, that will be handled by our local authorities. But yellow fever is the question on which the South is very much afraid.

Mr. MANN. I ask you, so far as you know, whether there was any objection to have the national quarantine have the same control over bubonic plague?

Mr. SANDERS. We have none, sir. You may include all the contagious diseases, so far as we are concerned. We would be willing to have the national quarantine take charge of them. But we are particularly anxious about its having charge of yellow fever.

Mr. GAINES. Am I correct in understanding that your position is that people in the several communities are afraid that the health boards of other communities will suppress information as to the existence of yellow fever in their communities, and in order to promote their trade—or keep from harming it, is probably the better way to put it—they will not be conscientious enough in safeguarding the health of other communities? Have you any objection, constitutional or otherwise, to giving the United States the authority to give persons whom they have examined a clean bill of health—if that expresses it? I do not know whether it does or not.

Mr. SANDERS. We of Louisiana were represented, sir, at Chattanooga by a large delegation, and we expressed ourselves as quite willing to do that. So far as this bill goes—it does not go as far as the Louisianians would be willing to go. But we do not want to ask anything that would provoke a conflict and prevent the bill as it is from becoming a law.

Mr. GAINES. Have any of your people, or any lawyers, prepared any brief on the question whether Congress has the power to pass a law that would give that authority?

Mr. SANDERS. I do not think we prepared anything, sir, but we brought a lawyer along with us. We did not expect that you gentlemen would listen to a lawyer, but we have brought a very eminent lawyer with us, and I would like him to answer your questions.

Mr. ESCH. Is this bill the result of the Chattanooga convention?

Mr. SANDERS. Yes, sir.

Mr. ESCH. With what degree of unanimity was this bill agreed upon by the representatives of the Southern States at that convention?

Mr. SANDERS. It was agreed to absolutely unanimously by a very large convention of 800 people, embracing 8 of the governors and many of the Senators and Congressmen of the Southern States. They agreed upon it unanimously, and it was more far-reaching than is expressed here.

Mr. ESCH. This bill carries half a million dollars. How much of your coast is contemplated to be protected by this quarantine service?

Mr. SANDERS. This bill limits it to the Gulf States.

Mr. ESCH. There is equal necessity for Florida and the coast of South Carolina, is there not?

Mr. SANDERS. Yes.

Mr. ESCH. Why not put that in, too?

Mr. SANDERS. We want it primarily for the Gulf States. If the rest of the country does not want anything, we are not to antagonize them on that issue.

Mr. ESCH. Were North Carolina and South Carolina and Georgia and Florida represented at that Chattanooga convention?

Mr. SANDERS. Yes, sir.

Mr. ADAMSON. I suppose they confined their action to this locality on the subject of yellow fever because that was the most present and imminent danger?

Mr. SANDERS. Yes; that is the chief danger that concerns the South, sir.

Mr. KENNEDY. Do you not think that this law should be general in its scope, to do what is needed all along the coast?

Mr. SANDERS. Yes; what we want is some relief.

Summer is coming on us. We do not want our intercourse destroyed with other States, and we are, therefore, willing to take half a loaf, rather than have no bread, after attempting to get a whole loaf.

Mr. MANN. You do not want to be crushed between the upper millstone of Federal authority and the nether millstone of States rights? [Laughter.]

Mr. SANDERS. No. We want relief, and we do not know any other authority to whom we can come for relief.

Mr. MANN. Last summer, as I remember, in New Orleans, the National Marine-Hospital Service and the Public-Health Service of the Government had control of the quarantine service by consent there?

Mr. SANDERS. Yes.

Mr. MANN. There is no such authority in this bill, as I understand it, as would give them that right?

Mr. SANDERS. No; but I understand that if any community requests it the Federal Government is authorized to act.

Mr. MANN. I do not mean upon request. But under this bill the Government would not have the right to take charge of the yellow-fever question in New Orleans, unless requested by the local authorities?

Mr. SANDERS. No, sir; I do not think so.

Mr. KENNEDY. That is, the bill would not confer any right. There is a question as to whether the National Government has the right or power. But that is another question. I suppose a thing that menaces the safety of the whole country, as, for instance, the existence of yellow fever in any State, might be a question for national control?

Mr. SANDERS. Yes, sir; this does not touch that. It touches the sea matter, foreign commerce, pure and simple; not the interstate commerce.

Mr. STEVENS. Are you familiar with the facts requiring the enactment of section 6 of the bill, as to the number of quarantine stations or plants established by the States or local authorities that might be acquired under that act? Do you know where they are, or where they are likely to be, and the value or expense involved to the United States Government in acquiring these?

Mr. SANDERS. There are at present, sir, quarantine stations on the Gulf coast at the ports of Pensacola, Mobile, Ship Island, New Orleans, and Galveston, and I suppose there is one also at Port Arthur. Those are the principal ones on the Gulf coast.

Mr. STEVENS. Who owns those?

Mr. SANDERS. The State authorities. In the Mississippi station there is a complete plant. It cost a great deal of money. It is 90 miles from the mouth of the Mississippi River, where it is free from any connection or possibility of passing contagion, or contagion to any of the communities.

Mr. STEVENS. As I understand, this section contemplates the United States acquiring some or all of these stations.

Mr. SANDERS. At Pensacola the Federal authorities have already controlled it for several years, and the administration has been most satisfactory to the health authorities and to the people of Pensacola, and in fact to the whole State of Florida.

Mr. STEVENS. Have you any idea as to the probable or possible cost to the United States of acquiring any of these stations under the provisions of section 6?

Mr. SANDERS. Roughly speaking, sir, I should think \$100,000 might cover the acquirement of all that might be required on the Mississippi River. That would be the largest station.

Mr. STEVENS. What about the station at Ship Island that you speak of?

Mr. SANDERS. That is already a Government station.

Mr. STEVENS. I understood you to say it was a State station.

Mr. SANDERS. No; I should say that Galveston, Mobile, and Ship Island are all State stations.

Mr. DAVEY. They are now under the control of the Navy Department?

Mr. SANDERS. Yes.

Mr. MANN. Have you made any estimate of the loss caused by the outbreak of yellow fever in the South last summer?

Mr. SANDERS. I do not think anybody could estimate within millions what it cost us. It disorganized the whole commerce of the South, and that at a period when the South is putting on its working clothes and progressing. You can not figure it out in millions.

Mr. MANN. Do you know how much the people of New Orleans expended in endeavoring to suppress the outbreak?

Mr. SANDERS. The actual expenditure was a mere trifle, a mere bagatelle, something like \$400,000. They have expended since then in mosquito netting and cleaning cisterns something like \$350,000. But those expenses are nothing compared to the loss of commerce and the loss of values resulting. Those can not be figured out in the millions. The expense of handling this by the State or Federal authorities is a mere bagatelle compared with the harm that would come from doing nothing, of leaving us to quarrel among ourselves and get into difficulties, as we did last summer.

Mr. ESCH. Section 6 of the bill provides that the General Government shall take over the quarantine stations belonging to the several States. That is contemplated. How many of such are there on the Gulf?

Mr. SANDERS. Three or more—Mobile, Galveston, and Port Arthur, possibly. Then there are some minor stations in Louisiana where there are some small schooners, but they are of minor importance and of slight extent. There are some inlets to the sea there where light-draft vessels come in and go out.

Mr. MANN. Are there no stations in Florida?

Mr. SANDERS. There may be; but not on the Gulf coast.

Mr. DAVEY. They are already under the control of the Federal Government.

Mr. SANDERS. The whole of Florida is under the control of the Federal Government. Only Alabama, Mississippi, Louisiana, and Texas—if Texas desires—are contemplated in this bill.

Mr. RUSSELL. This section 6 does not authorize the Government to institute condemnation proceedings against the quarantine stations established by the local authorities, but only to acquire them with the consent of the State authorities.

Mr. STEVENS. What I would like to know is whether it would be a good policy on the part of Congress to require specific designations of land to be acquired by the Government, or legislation acquiring lands by the United States Government.

Mr. SANDERS. If you will permit me, gentlemen, I would much rather that our legal adviser should advise you on this question and on similar matters. I do not want to intrench upon the legal domain. Mr. Dart, here, will be glad to answer questions of that character.

The CHAIRMAN. Mr. Dart, we will hear you.

STATEMENT OF MR. H. P. DART, ATTORNEY AT LAW, NEW ORLEANS, LA.

Mr. DART. Mr. Chairman and gentlemen, while I might be called a legal adviser to the committee from New Orleans, I beg to assure you in all modesty that I lack one of the essentials of a legal adviser—I have no retainer except the love of my country. [Laughter.]

I came here with these gentlemen, who represent the city of New Orleans, not as citizens of Louisiana specifically, but as people of the United States. We are like a great body that has its foot suffering with a huge ulcer. We recognize that the port of New Orleans may be regarded as an ulcer on the great body of the United States. We demonstrated it last summer. We were paralyzed by the few cases of yellow fever that appeared in our port; and they paralyzed not only the South and the Southwest, but they affected the whole Mississippi Valley. And the disease with which we are suffering filled the veins of the States as far north as Kentucky and Tennessee, and as far west as California.

Therefore we have come to you to-day, not as Louisianians, and not as people of New Orleans, but as people of the United States, asking you to establish, not regulations with respect to our intercourse with each other, but regulations to protect the whole United States from the ulcer which lies in our foot and which we are unable to handle ourselves.

That is the story we have come to tell you, and we ask you to help us. The entire danger from yellow fever lies south of the United States, from Cuba on the one side to the lowest ports of Central America on the other. We import yellow fever. We import it under regulations of different States, which vary as much as the usual faces of men and public questions vary. New Orleans establishes a set of port regulations, Mobile another, Savannah another, and the ports of Florida another. We may admit a vessel with yellow fever upon it from Colon with five days' limitation; Mobile with one day's limitation.

Therefore the bill now submitted to you is addressed entirely to the external maritime commerce of the United States. We recognize it is simply throwing the shield of the United States over all the ports of entry in the South, and it is not for protection alone, because for the 100 years of our existence we have been able to suffer and still grow strong under our afflictions. We have had the yellow fever and other afflictions to contend with, but perhaps through the advantage of the little mixture of French blood that is in us we rise out of our difficulties.

But we have now got into a position where we are not only a nuisance, but a peril to the body politic. If you can not remedy it the United States is in this position, that we have a running sore here that you as surgeons can not cure; you can not eradicate this ulcer, this cancer, because you have not the power.

In the *Champion* case—the case of *Champion v. Ames*—the last case reviewed, so far as I know, by the Supreme Court of the United States, they review the entire doctrine of the United States to control the intercourse between foreign nations and this nation, adopting Judge Marshall's decision that commerce is intercourse; not the mere handling of goods, but the intercourse of people. The Supreme Court has generally broadened its view, until to-day we are able to make, as constitutional laws, enactments to prevent the handling of cattle and the importation of all sorts of diseases, and the commission of all sorts of offenses against morals.

In this case of *Champion* they maintained that the States prohibited the transmission of lottery tickets and prizes through the mails.

In other cases the power of the Government has been invoked to prevent the importation of cattle diseases. Texas has had bills passed to prevent the passage of cattle from Louisiana into Texas afflicted with diseases, and some of you are perhaps more familiar with that case than I am.

In this case of Champion they quote a number of cases—I am reading from 188 United States Reports, in which, at page 348, Mr. Justice McLean is quoted as saying: "Commerce is defined to be 'an exchange of commodities,' but this definition does not convey the full meaning of the term. It includes 'navigation and intercourse.' That the transportation of passengers is part of commerce is not now an open question."

Now, gentlemen, we do not get yellow fever from the goods that we import from South or Central America. We get it from the bodies of the people that are brought in to us, and we ask the Congress of the United States to create a quarantine system—a quarantine service—under which you will have the power to establish uniform quarantine regulations, so that every port to the south of us that is afflicted with disease can be guarded against.

We hope, if this bill passes, that the quarantine regulations will be such that all the ports of the United States will be put on a parity, and their vessels and passengers and cargoes will be admitted at a parity. That is all this bill asks for. If you have not the power to pass that, then it seems to me we have had all the decisions of the Supreme Court of the United States in vain.

The CHAIRMAN. Under that decision why do you limit the power of the Government to external ports?

Mr. DART. Because I understand that no decision of the Supreme Court of the United States has yet reached the point as to whether you can control the passage of people from point to point in the interior.

The CHAIRMAN. You have cited the case of Texas cattle. It is done there in that instance.

Mr. DART. As I understand it, Mr. Chairman, those things are based on the statutes of States.

The CHAIRMAN. No; there is a Federal statute.

Mr. DART. But I understand that primarily each State has passed laws suiting the circumstances, and the United States has then followed with a general statute which permits the enforcement of the local statute in those particular cases. I do not understand that any statute of the United States has yet gone so far as to prohibit the passage of things and persons from one border to another.

However that may be, Mr. Chairman, the object of the people now addressing you is to obtain a maritime quarantine which we think will not trench upon anyone's rights, or step upon anyone's toes. If you can throw a safeguard over our ports you will destroy the disease by depriving it of its source. If you can not import a disease, we have no fear of it, because we have demonstrated that, once within our shores, we can control it ourselves. But we think that the moral effect of the adoption of this law will be to restore confidence all over the Union in the proper administration of the quarantine service in the ports of the United States.

Mr. KENNEDY. You do not believe, if Louisiana would ever refuse to take charge of yellow fever and allow it to grow there and foster

and maintain it, that the National Government would not have the power to take charge of it?

Mr. DART. Not only that, but it would be its duty to take charge of it.

Mr. KENNEDY. It would not be in opposition to State rights?

Mr. DART. No, sir. I am not one who carries the State rights doctrine to the limit of *reductio ad absurdum*. One of the most distinguished men of Louisiana, Mr. Ed. Terrell, took the ground in a notable address some years ago that matters of quarantine were State matters alone, and could not be handled by the Federal Government. I want to say that Mr. Terrell's views are not shared by any considerable number of members of our State bar, or by any considerable number of the bar of other Southern cities. The right to control the commerce and intercourse with foreign nations is as supreme to-day as it was when Chief Justice Marshall wrote his famous decision, only we are applying it to new conditions, and the Government is constantly working along those lines.

Mr. GAINES. As a lawyer, do you think it is constitutionally necessary to have that provision in section 4, which practically permits the State authorities to hold up or detain vessels or persons when released by the authority of the Surgeon-General and allowed by him to enter a State? That is section 4, beginning in line 10, which seems to provide that the State authorities may overrule any action of the Federal instrument that we are asked here to create.

Mr. DART. Do you want to know whether I believe, as a lawyer, that the United States has the right to prohibit the exercise of such authority as is here conveyed?

Mr. GAINES. Yes.

Mr. DART. I believe that the United States has that right; that that clause which says that "nothing in this act shall be construed to authorize any vessel or any person released from quarantine detention by authority of said Surgeon-General to enter any State or Territory of the United States, or the District of Columbia, against the expressed objection of the lawful health authorities of such State, Territory, or District," was put in to meet the last lingering doubt or sentiment remaining in some of those Southern States. I believe it would be a dead letter. The moment the United States Government comes in with quarantine regulations that are uniform, and enforces them strictly and impartially, without deference to any, that clause would be a dead letter. I believe no State would ever raise its voice to prevent a person with a clean bill of health from coming in.

Mr. MANN. Why not strike it out, then?

Mr. BARTLETT. The point of it is this: You say a State or municipal authority would not exercise the power. Would you deny them the right to exercise the power? We want to get your view on the subject.

Mr. DART. I want to explain that my individual views go further than your bill. I believe the United States Government has the right to absolutely say that when it determines that vessel so-and-so and man so-and-so and cargo so-and-so, coming in from a foreign port, has complied with the laws and regulations of the United States and presents a clean bill of health, I believe, and I think every State ought to believe that this is a wise act, done with a wise purpose.

However, I believe that hundreds of other men differ with me, and that clause on that account has been put in to meet that difference of opinion.

Mr. BARTLETT. If you extended that principle to a quarantine, you could extend it over every other subject falling within that provision of the Constitution.

Mr. DART. Yes, sir; and I think we have exercised that power.

The CHAIRMAN. With your view—and I confess it is my own—this provision would be a complete surrender of a part of the sovereignty of the United States?

Mr. DART. It would be to men of our views.

Mr. ADAMSON. Are you of opinion that you can change the Constitution without an amendment, according to the rule laid down therein?

Mr. DART. That would be a hard question to answer, because I do not think you intend it to be answered. [Laughter.]

Mr. ADAMSON. That may be a Georgia joke, but when I maintained these views and in the end finally agreed to a quarantine measure in the Fifty-fifth Congress, New York came in and finally objected to it.

Mr. DART. Tempora mutantur, et nos metamur in illis. [Laughter.] We all change our views on certain subjects.

Mr. ADAMSON. You can not change the Constitution to meet your views, though. [Laughter.]

Mr. MANN. You may gradually get your views around to meet the Constitution. [Laughter.]

Mr. RUSSELL. Suppose this bill were made the law, and after having been made the law the quarantine authorities provided for in this bill should release from quarantine some person or vessel going from the State of Louisiana to another State, and the State authorities in the State to which the person or vessel went should see fit to invoke this clause in section 4, which we have been discussing. Do I understand you to mean by the statement made a moment ago that the passage of this bill would deprive the States of the right to invoke that law?

Mr. DART. No, sir; the bill expressly reserves that right.

Mr. RUSSELL. Would this bill confer such authority on the Federal Government as would prevent the States from invoking the power?

Mr. DART. I understand you to ask me the question whether the United States Government under this bill, through the machinery of this Federal quarantine service, visés my health, or passes upon my health and admits me as being healthy and unobnoxious to the people of the country and allows me to enter the port of New Orleans, whether with that visé I could go into Alabama? I do not understand that the bill confers that power, and I do not believe we have reached that point in the discussion. I hope ultimately that the Government will reach that point.

The CHAIRMAN. Is no this the distinction, that under that control which the Government has over commerce, that individual or that merchandise is controlled by the Federal authority until the individual or merchandise mingles with the population of the State, or the commerce mingles with the commerce of the State?

Mr. DART. That is my idea.

The CHAIRMAN. Up to that time it is under the control of the Government, and after that time, after it becomes a part of the community or a part of the property of the community, it becomes subject to the regulations of the State?

Mr. DART. Yes; the sovereignty of the State seizes the individual or merchandise at that moment.

Mr. ADAMSON. Then, after the Government has been put on you, you must scuffle to get rid of it yourself? [Laughter.]

Mr. DART. No. I understand in New Orleans we could create a detention hospital. I do not understand from this bill that the Government of the United States expects to dump anybody upon any State of the Union. It means to certify that the man is admitted. Beyond that the sovereignty of the State seizes the individual and the police regulations of the State control his further movements.

Mr. BARTLETT. I would like to ask you as a lawyer, Do you think the Government of the United States or Congress could do anything more than that? Could they, by any act of Congress, deprive a State of the right of giving a clean bill of health to any cargo or car or ship or passenger—deprive the State of Louisiana or the city of New Orleans of the right of determining its action as a part of its regulations—that that decision was not true or sound and would not hold?

Mr. DART. That question has not yet been determined. I say, though, from my own interpretation of the Constitution, that that ought to be the law of the land, if it is not.

Mr. BARTLETT. Which ought to be the law?

Mr. DART. That if the Government admits a man, say Mr. A, and certifies him by a bill of health he ought to be admitted.

Mr. BARTLETT. I ask you as a lawyer.

Mr. DART. I answer you as a lawyer that I do not think the question has ever been determined by the courts. I give you the two ends, the two horns, of the dilemma. I give you my views as a lawyer and then I give you my views as a man. I stated it as I think it ought to be.

Mr. BARTLETT. As a lawyer do you think that should be done—that the police power of the State should be vacated?

Mr. DART. I should yield to you, sir, that the United States Government has no police power in conflict with the police power of the States.

The CHAIRMAN. The Supreme Court of the United States has determined that when the police power touches the interstate commerce, for instance, in the case of intoxicating liquors, under a statute of the United States which provides that the jurisdiction of the State shall apply, or that the police regulations of the State shall apply, when that commerce comes within the jurisdiction of the State—they have held in cases of that kind that that power attaches after the delivery to the consignee of that property or commerce—that a State does not have authority over it until after it is delivered to the consignee and mingles with the general property of the State.

Mr. DART. I so answered my friend on my left [Mr. Bartlett]. I understood the court had gone that far, but not so far as to prohibit personal intercourse.

Mr. ADAMSON. If you will permit me, I will suggest to you and the gentlemen both, what the lottery cases and liquor cases did not

decide—a decision made many times, that disease and death are not commerce. It is true that as to foreign commerce the Government can say that foreign ships can not bring disease and death, and they can give a clearance card. But you might just as well put in a provision here that the sun shall not shine, so far as the Constitution is concerned, as that a State shall not manage its own quarantine, because the States have never delegated that power to Congress.

Mr. DART. Do not the United States laws now prevent diseased and demented people from entering the United States?

Mr. ADAMSON. We have turned over to the Federal authorities the foreign quarantine stations in Georgia, but if they fail to do it, we reserve to ourselves the right of doing it, and we are going to do it.

Mr. DART. I entirely agree with you as to that. We believe in that in Louisiana.

Mr. KENNEDY. I do not think the law is thoroughly understood. I believe both the National and State governments have jurisdiction. One will not be likely to come in conflict with the other.

Mr. DART. Yes. As I say, the passage of this bill will be a great moral lesson.

Now, I want to suggest one or two other things. The suggestion has been made as to the amount of money that the United States would possibly be called upon to expend for acquiring these quarantine stations. We understand the bill to leave that optional with the United States to acquire these stations at a price suitable to it, or to establish its own stations.

Mr. ESCH. That is in section 6?

Mr. DART. Yes; section 6 reads:

That in every port or ports where quarantine stations and plants are already established by State or local authorities it shall be the duty of the said Surgeon-General, under the direction of the Secretary of the Treasury, before selecting and designating a quarantine station and grounds and anchorage for vessels, to examine such established stations and plants with a view of obtaining a transfer of the site and plants to the United States, and whenever the proper authorities shall be ready to transfer the same or surrender the use thereof to the United States the Secretary of the Treasury is authorized to obtain title thereto or possession and use thereof, and to pay a reasonable compensation therefor, if, in his opinion, such purchase or use will be necessary to the United States for quarantine purposes.

We understand that to mean, gentlemen, that the United States may say, "We will take over these things if we agree upon a price, but if we do not, or if we do not like the location, we may establish our own." And it is possible the United States Government would establish a quarantine station right beside ours in the Mississippi River, or anywhere else in the Union.

Mr. MANN. Do you know whether any estimate has been made of the expenses of acquiring either those quarantine stations or those provided in the other section?

Mr. DART. No, sir; I came here simply to help my brethren from New Orleans to present any questions that they might not be as familiar with as I may be from having studied them.

Mr. KENNEDY. Now, in the event that the Secretary of the Treasury can not get those quarantine stations owned by the United States, ought this bill to confer any power to appropriate other land?

Mr. DART. I think it does.

Mr. KENNEDY. It does not give the power of condemnation.

Mr. DART. Yes; in the preamble or first section—

That as soon as practicable after the approval of this act, the Surgeon-General of the Public Health and Marine-Hospital Service of the United States, with the approval of the Secretary of the Treasury, shall select and designate suitable places for quarantine grounds and anchorage for vessels, at such points on the seacoast of the United States as, in his judgment, are best suited for quarantine grounds and anchorages and necessary to prevent the introduction of yellow fever into the United States. That in cases in which the title to the land and water so selected and designated is in the United States it shall be the duty of the department, bureau, or official of the United States having custody or possession of such land and water, or any part thereof, on demand of the Secretary of the Treasury, to deliver the same into his custody and possession, for the use of the Public Health and Marine-Hospital Service, evidencing such delivery by a suitable instrument in writing to be delivered to the Secretary of the Treasury. That in cases in which the title to such land and water, or any part thereof, is in any other owner than the United States it shall be the duty of the Secretary of the Treasury to secure the title and possession of the same to the United States for the use of the Public Health and Marine-Hospital Service of the United States, by purchase at a reasonable price, if possible; but if in his judgment the price demanded for such property be excessive he is hereby authorized to apply to the Attorney-General of the United States to cause to be instituted, in the proper tribunal, condemnation proceedings in the name of the United States, for the purpose of acquiring for the United States the title and possession of such land and water, and said Attorney-General shall, as soon as possible, after such application by the Secretary of the Treasury, cause such proceedings to be instituted and conducted to a conclusion and the custody and possession of such land and water when duly acquired in accordance with the award made in such condemnation proceedings shall be delivered to the Surgeon-General of the Public Health and Marine-Hospital Service.

Mr. MANN. Section 1 of the bill gives the power to take all the land they want.

Mr. DART. Yes; ample power is given.

The CHAIRMAN. What interpretation do you give to the language of the bill beginning in line 23, page 8, and following?

Mr. DART. I will read that, commencing in the middle of line 22. [Reads:]

For the purpose of carrying into effect the provisions of this act, as well as for the purpose generally of preventing the importation of yellow fever into the United States, and for other purposes, in cooperation with the State health authorities, of eradicating it should it be imported, of preventing its spread from one State into another State, and of destroying its cause wherever the same may be found.

I understand that to meet the views of the gentleman from Georgia.

Mr. ADAMSON. Existing law provides for all that.

Mr. DART. I understand that was fully covered already, Mr. Chairman, by statutes of the United States.

The CHAIRMAN [reads]:

For the purpose of carrying into effect the provisions of this act, as well as for the purpose generally of preventing the importation of yellow fever into the United States, and for the further purposes, in cooperation with the State health authorities, of eradicating it should it be imported, of preventing its spread from one State into another

The words "in cooperation," do they mean that there is equal authority on the part of the State authorities with the Surgeon-General?

Mr. DART. I think they are susceptible of that meaning, but in practice I believe it would be exactly as it occurred in Louisiana last year. There the State authorities simply abdicated, and turned over

their money and appliances to the United States Government. I think the sentence, as now drawn, means that they shall get together for the purpose of destroying and stamping out disease.

Mr. ANDERSON. I think this has reference to interstate traffic and the running of through trains.

Mr. DART. I think it means this, with all due deference to you: Suppose that smallpox had broken out in Georgia and was becoming epidemic and was threatening an adjoining State. No; I mean yellow fever, not smallpox. I suppose Federal quarantine could come in there and cooperate with the State health authorities, because a later provision says, as you will observe after the comma on line 1 of page 8, read in connection with the language on line 25 of the page before that, "for the further purposes * * * of eradicating it should it be imported, of preventing its spread from one State into another State, and of destroying its cause wherever the same may be found."

The CHAIRMAN. Assume a case near the borders of Mississippi and Louisiana. Each State has its health authority, and the third one is the quarantine officer of the United States. Who is to be supreme in that matter? Suppose these gentlemen all differed in their opinions; who is to control in a case of that kind?

Mr. DART. In the emergency here?

The CHAIRMAN. Yes.

Mr. DART. I should say the United States Government would control it.

Mr. KENNEDY. In the event the health officer of the State would do nothing?

Mr. DART. Then the United States could take charge.

Mr. KENNEDY. He could not cooperate then. Why not strike out that parenthetical clause, "in cooperation with the State health authorities?"

Mr. ADAMSON. Because the bill would not be of any account if you did.

Representative JOHN S. WILLIAMS of Mississippi. Mr. Chairman, will you let me say a word there?

The CHAIRMAN. Certainly, sir.

Mr. WILLIAMS. The gentlemen who addressed you and the chairman have plainly indicated the difference there—the police power ensues after the thing is labeled and become a part of the State conditions. If the fever should land at New Orleans and begin to spread, it would be subject exclusively to the police power of the State of Louisiana. The Federal Government after it landed would have no right to go on land and establish a hospital and pass quarantine regulations, or medicinal regulations, or rules of any sort, or to order cisterns to be screened, or order oil to be put on pools and stagnant water to kill mosquitoes; and for that reason this language was put in.

Mr. MANN. They would do it at the request of the State authorities, and the national service is not obligatory unless they choose to go, and they probably would not choose to go unless they were given control.

Mr. DART. That was the method last year, and doubtless history played some part in drawing that.

Mr. ADAMSON. Congress simply authorized its officials to do that, if the State authorities desired.

Mr. DART. That seems to be the thing, sir. Now, I have taken up so much of your time that I want to be as brief as I can now. We are now in New Orleans at the beginning of summer. In six weeks we shall have the same weather which you gentlemen who are fortunate enough to live north of Mason and Dixon's line will have in the month of July. We conjure you to do what you can in the name of humanity, and whatever you do, do it quickly. If you are going to give alms—if my friend will allow that provision—

Mr. ADAMSON. You are not doing your duty. You ought to demand that the Federal Government shall do its duty. [Laughter.]

Mr. DART. If we are not successful in convincing the gentlemen, let us take a lowlier plane and come like Lazarus to the table of Dives, the rich man, and beg of you the crumbs of comfort that you can give us. We have demonstrated that we in the South can raise all the money needed to fight infection when it comes into our midst. But we want the moral support of the United States. We want to feel that we are a part of you, and that when we stand, as we did last year, appealing for your assistance, that we are not appealing as beggars, but as people of a common country.

Mr. ADAMSON. Now you are getting on the right kind of ground. [Laughter.]

Mr. MANN. If you gentlemen of the minority had not prevented it, we would have done it for you long ago. [Laughter.]

Mr. ADAMSON. I am not in favor of bargaining away what the Constitution gives as the rights and privileges and prerogatives of the localities.

Mr. DART. I will fight as long as I can, but when I am no longer able to fight my own brethren I want to link arms with them and work in harmony with them.

Now, gentlemen, I want to introduce Doctor Kohn, who has given years to the study of this question. He will speak to you on the matter of figures and facts.

Mr. ADAMSON. If there are any other localities where there are diseases, it is the duty of Congress to protect them also.

Mr. DART. If you will help us take care of yellow fever we will help you take care of anything else you call on us for.

STATEMENT OF DR. JOSEPH KOHN, EX-MEMBER OF STATE BOARD OF HEALTH AND CHAIRMAN OF THE QUARANTINE COMMITTEE, NEW ORLEANS, LA.

Doctor KOHN. Mr. Chairman and gentlemen of the committee, I think the question of the constitutionality of this matter has been thoroughly ventilated, as also the urgency of our request for relief. I will simply confine myself to a few suggestions in regard to the bill itself.

I think, for example, that on page 3, section 3, and line 21, the words "of the United States on the Gulf coast," that should be eliminated. I do not see why that was put into the bill. It was an afterthought, prompted by the suggestion of some gentleman who had his own peculiar views on the question. I do not see why this protection against yellow fever should be confined to four ports on the Gulf coast, and why Charleston, Savannah, Brunswick, and other

ports of the South Atlantic coast of the United States should not be included.

Mr. BARTLETT. Why not New York?

Doctor KOHN. It has yellow fever, and——

Mr. KENNEDY. Why should this bill be confined to yellow fever?

Doctor KOHN. It should not be, but it is.

Mr. KENNEDY. I think it should not be. There is no use in coming in with another law of a similar character to protect us from some other disease that might arise. It might as well be made general, might it not?

Doctor KOHN. I understand this provision has been accepted simply because the task of getting the Representatives of the entire country united upon giving the control of Federal quarantine entirely within the hands of the United States would be too great and difficult a task, and would postpone the relief needed. That is why we have consented to yield on this question. On the broad question of what should be done for the entire United States I agree with the gentleman, so that we cheerfully consented at present to get relief in this way.

Mr. KENNEDY. Do you not think New Orleans could trust the Executive Department to carry into effect this law to give relief, first, to New Orleans, and wherever else yellow fever was imminent?

Doctor KOHN. I believe if the men in authority in Louisiana would follow the example set by Governor Blanchard, of Louisiana, and the mayor of New Orleans in asking for this relief, it would be just as good. But what guaranty have we that there will always be men in the gubernatorial and mayoralty chairs who will consent to that? We have had men heretofore who would not yield their individual will to the general good. We might just as well place the South Atlantic coast and Gulf coast in the Marine-Hospital Service, which has the means and facilities of protecting our coast far better than any State or locality could. Moreover, then all the great facilities of connection with all these dangerous spots in South and Central America might be guarded against, and by a grand system of protecting one against the other, I think they would have a better purview against the situation and be better enabled to protect us against invasion.

Mr. Chairman, if there is any member of the committee who wants to ask me regarding this suggestion about eliminating those words about the Gulf coast in section 3, I would be very glad to answer.

The CHAIRMAN. In view of the language you find on line 17 of page 4, "and if it shall be necessary, in the judgment of said Surgeon-General, for the protection of any other port or ports on the coast of the United States that additional quarantine stations and anchorages of refuge shall be established he shall, with the approval of the Secretary of the Treasury," etc., does not that do away with the necessity of changing the language you have referred to?

Doctor KOHN. Excepting to make it uniform. But why put in one part of the bill "Gulf coast," and then in another part say "any other port or ports on the coast of the United States?" Why not make it uniform, so that there would be no quibble about it? Because anybody then would know that all these ports that are points of danger would be included in the bill.

Now, I want to call your attention to one thing, Mr. Chairman and gentlemen, that if the Surgeon-General, for example, would consider Norfolk, or Savannah, or Brunswick, Ga., or any other of those ports that are not mentioned in the clause which I have referred to, and that should not be included in the strict rules established by him, it is entirely possible for any person coming from an infected port to reach those ports.

Mr. ADAMSON. The danger is more imminent upon the Gulf coast, and presents exactly the situation which would justify the Government in selecting at once a place like Dry Tortugas and establishing a station and protecting the place, as that needs it most. That is my idea on that language.

Doctor KOHN. Mr. Chairman, in reply to that, I would say—

Mr. ADAMSON. That is my understanding of that. The situation is presented where the Government can act at once.

Mr. STEVENS. What point would you have in mind that would be designated or required by the lines 13 to 17, on page 4, "such quarantine station and anchorage of refuse," etc.? There must be some particular station in the mind of those who framed this bill. Will you inform us?

Doctor KOHN. I will, as soon as I am through with the question proposed by the gentleman from Georgia. In answer to the question of the gentleman from Georgia, we are all apt in communities as well as in legislatures or among people in general to act entirely upon the most recent experience. We do know that there has been an invasion of yellow fever in Brunswick, Ga.—

A BYSTANDER. In 1878—

Doctor KOHN. Yes, and consequently, why just act upon the experience of last summer when New Orleans and Pensacola became infected, and not act at once upon all the dangerous spots?

Mr. ADAMSON. Do you not regard the Gulf coast now as the most imminently dangerous?

Doctor KOHN. Not at all; there is no more danger on the Gulf coast than anywhere else of importing a living case suspected of yellow fever, or having the germs of yellow fever in him. It does not grow there. It must be brought there in person.

Mr. MANN. Is there any danger of yellow fever being brought into New York by a passenger from the South?

Doctor KOHN. From all these dangerous ports it takes a longer time to reach New York than it does to reach the South Atlantic ports. In other words, the doctors have told us that six days at the utmost is the time needed for incubation, and the passenger who reaches New York will come after five days, and if he has any high temperature the health authorities of New York will detain him, so that there is a more remote danger that a case of yellow fever will break out after he has landed in the port of New York and has taken a train for the South than there is if he should land at a southern port and take a train inland.

Mr. MANN. What I want to get at is whether, if you strike out the words "Gulf ports," you will require the national quarantine service to maintain a yellow-fever service at the ports of New York and Philadelphia and other ports?

Doctor KOHN. No; only where he deemed it necessary. And the Surgeon-General is on record as to that, as for example, when in any

port, say Boston or New York, where the period of transition in transportation requires more than the time needed for the development of yellow fever in the body of a person, there is no need of a yellow-fever service there.

Mr. MANN. But if the existing Surgeon-General or some subsequent one should be of the opinion that they needed a quarantine service in New York for yellow fever, under this bill the Secretary of the Treasury could go there and condemn land for that site.

Doctor KOHN. But he has the protection, or I might say the advice and counsel, of men of critical understanding, and finally the advice and counsel of the Secretary of the Treasury; and a man could not arbitrarily require inspection in a port where it was unnecessary.

Mr. STEVENS. That might be a matter of opinion.

Doctor KOHN. No, sir. Five days was formerly regarded as the period, but I think one case was developed in five and one-half days after a man had left a certain port.

Now, the next point, Mr. Chairman, is on page 4, line 16, and that, I believe, has been taken up already in other quarters. You have here, in line 15, this language: "And shall be distant not less than 35 miles from any port or subport of entry of the United States."

That was evidently drawn up with the express purpose of locating the harbor of refuge, as it is called, at some point that is distant 35 miles from any port or subport of the Gulf coast, and it is naturally inferred to be Dry Tortugas.

Now, Dry Tortugas, if you are familiar with that part of the country, is situated near the western shore of the lower end of Florida. The port of New Orleans is located almost 400 miles from Dry Tortugas, and most of the vessels that ply from these South and Central American and other tropical ports take the western route from the Caribbean Straits, and it would entirely destroy all that shipping and commerce if those vessels would have to take the risk of not alone being detained at the station of refuge, should a case of yellow fever be developed on them, but also of being compelled to travel nearly 800 miles to that substation and back again; and they would, therefore, naturally choose another port with which to communicate.

Mr. ESCH. Has every ship to go to Dry Tortugas?

Doctor KOHN. Under this bill I do not know of any other station that could be meant.

Mr. GAINES. Where is that language?

Doctor KOHN. On page 4, lines 15 and 16. There is danger that the ship may be detained; and if, in addition to that, they shall be compelled to travel 800 miles to go and come from that port, it would eliminate the entire commerce of all these ports with New Orleans.

Mr. RUSSELL. What language would you suggest?

Doctor KOHN. I would suggest that the station of the Mississippi River should be substituted. You must give the port of New Orleans, the most important port in the South, adequate protection, and also allow them to establish a substation near there, because it would be a hardship for any vessel to go away out 400 miles to sea when in fact the relief is right at hand; and we have a substation there, or at least a so-called harbor of refuge, as we call it, at Pass a Loutre, and that is entirely isolated, and there is no danger of any infection.

The cases that may be brought there can be treated very safely, and it has no communication with any of the commerce of the Mississippi River.

Mr. STEVENS. Would you suggest that?

Doctor KOHN. Yes. I would suggest, then, as I suggested to the Louisiana delegation, to add or insert right after that passage the words "except in the Mississippi River, where the Federal Government shall obtain a site for a substation or establish its own station."

Mr. MANN. Where is this station?

Doctor KOHN. It is 90 miles below the city of New Orleans. It is equipped better than any other station on the coast. It is very finely equipped. The State of Louisiana has always expended a great deal of money for its quarantine service.

Mr. MANN. Is it on the river?

Doctor KOHN. Yes.

Mr. MANN. Would it not be possible for the mosquitoes to be infected at that point?

Doctor KOHN. No, sir; it has never happened.

Mr. MANN. Would it not be possible, if you had yellow-fever patients at that quarantine, for a mosquito to come in there and infect people on the boats passing up?

Doctor KOHN. No. As long as cases are suspended the ship and the case itself are transferred to the harbor of refuge, as it is called in this bill, in Pass a Loutre.

Mr. MANN. How far is that from the river?

Doctor KOHN. That is in another part of the Delta. We have three passes—the Southwest Pass, the South Pass, and the Pass a Loutre. But in fact the ship would come up the river and would be transferred to this substation, which is entirely isolated.

Now, if that is understood, I want to come to another point. This is a positive suggestion of the committee on health and quarantine, of which I am the chairman, and the delegation from Louisiana and Judge Davey are familiar with that.

Mr. ADAMSON. When you say isolated, how far do you mean it is from the land?

Doctor KOHN. It is on land, but it is away from any human habitation.

Mr. MANN. Do not people hunt there occasionally?

Doctor KOHN. I am coming now to something that people who are familiar with the modern knowledge of yellow fever may understand. This bill is drawn up on the lines of the knowledge that has prevailed in this country for many years, and every quarantine measure ever attempted is entirely on the line of this bill; and now since we know, since there is not a doctor or scientist or anyone connected with the question but who concedes that the fact has been established that the yellow fever can only be transmitted by the *stegomya fasciata* mosquito of the female sex, I do not see why these harbors of refuge should be required when all the necessary precautions can be taken on the ship itself.

I want to relate to you what happened in the city of New Orleans. A German war vessel, the *Bremen*, came up and developed a case of yellow fever. It was discovered at the Mississippi River quarantine station, and when the doctors there—the inspectors—visited the vessel they found that all the precautions had been taken by the medical

man on board. In other words, the man afflicted had been promptly transferred to the ship hospital, which was thoroughly screened over, and all means of egress and access were covered with 18-mesh wire. The weather was very bad, and it was necessary for the health and life of that man to keep him in that hospital. No objection was found whatever by the health officers, because there was no possibility of any mosquito being infected from him. We did not ask the ship to go to the Lazaretto, and did not ask the man to be transferred. He was simply screened in the hospital ship and he got well, and all the 600 sailors and others on board that ship remained unaffected, and after six days the ship was admitted to the port of New Orleans.

Why not embody something in this bill that will give the officers of the Marine-Hospital Service discretion, and not compel a ship, if a single case of yellow fever develops on it and has been isolated and screened, to go a long distance away for detention? Why not give them the discretion that they shall not compel the ship to go to the harbor of refuge, which would require 800 miles of travel to go and come there, and instead let them take care of the case as it may occur?

Mr. KENNEDY. Do you think it is wise to have that 35-mile limitation there?

Doctor KOHN. So far as New Orleans is concerned, it is entirely necessary, because it would kill all the commerce of the port—

Mr. KENNEDY. You mean it is unnecessary?

Doctor KOHN. Yes, unnecessary; undoubtedly.

Mr. KENNEDY. Ought not the Treasury Department to have discretion?

Doctor KOHN. I think in one part of the bill it has been given discretion that whenever a station may be located differently it may take other measures. The trouble with this bill, sir, is that it was originally drawn up to take the present United States harbor of refuge away from Ship Island, for the reason that Ship Island is very near the Mississippi coast, and it has been held by many doctors that the infection which entered Ocean Springs eight years ago and which was communicated to Biloxi, and finally to New Orleans, had its origin in communication with these men from the Ship Island station.

Mr. ADAMSON. How far is that from the mainland?

Doctor KOHN. Eight miles.

Mr. RYAN. Perhaps this point could be cleared up by asking Mr. Williams what he had in mind by inserting that distance 35 miles.

Mr. WILLIAMS. The gentleman from New Orleans told me—and he understands this section—that this section does not apply to ordinary stations at all. It applies to an anchorage of refuge. It is only when a ship is found, by actual examination at a quarantine station, to be infected with yellow fever that it is sent to the anchorage of refuge at all, and then it is not mandatory to send it there. It may be sent. The Surgeon-General is the one who decides; or his quarantine officer, his representative, decides. The gentleman seems to think it provides for only one anchorage of refuge. We describe this anchorage because we knew such anchorage could be found on the Gulf coast. When we came to consider the south Atlantic coast, to protect Charleston and Brunswick, we did not know where such a place could be found. We therefore put in this language—

And if it shall be necessary, in the judgment of said Surgeon-General, for the protection of any other port or ports on the coast of the United States that

additional quarantine stations and anchorages of refuge shall be established, he shall, with the approval of the Secretary of the Treasury, designate such quarantine stations and anchorages of refuge at such places as shall comply as nearly as practicable with the requirements as to depth of water, distance from ports or subports of entry, and safety of anchorage as prescribed in the foregoing provisions.

If, for example, a ship was examined at the Louisiana quarantine station and was found to be infected, but in the opinion of the quarantine officers was only so slightly infected as not to demand that it should be sent to the anchorage of refuge, it need not be sent; and if any gentlemen have any doubt of that they may put in there, right after that, some such word as "he may, in the discretion," etc. But it is already in the discretion. It is right on the bank of the Mississippi River. Plantations line the banks of the Mississippi River all around it, and it is right upon the land. We wanted a place that was isolated, cut off from all possibility of contact with the shore, and here is a place that is isolated. And we tried to get such a place as that, as near like it, on the Atlantic coast, as we can.

Mr. SANDERS. You have no anchorage outside the Mississippi River in the Gulf within 35 miles or within 200 or 300 miles.

Mr. WILLIAMS. We do not want the people of New Orleans to make a lazaretto at the mouth of the Mississippi River, threatening the Mississippi Valley.

Mr. SANDERS. But this has been there for one hundred and fifty years.

Mr. WILLIAMS. We wanted that thoroughly isolated by water from the land.

Doctor KOHN. I want to say, in answer to the distinguished gentleman from Mississippi, that there are no plantations near the Mississippi River station. As the mayor of New Orleans just tells me, there are none within 20 miles, and, so far as that lazaretto is concerned, that is the main objection in this bill, because of the fact that we have no island or harbor of refuge established within a reasonable distance from the mouth of the river. There is no person living there. It is a swamp. You know, gentlemen, the waters of the Mississippi River overflow every year, and it is not possible for anyone to live there or undertake agriculture there. The Mississippi Valley is not endangered in the least.

Accordingly, I again repeat what I said awhile ago, that under the present modern knowledge regarding the transmission of yellow fever, if there is no communication of persons there can be no spread of the *Stegomyia fasciata* mosquitoes. There are no *Stegomyia fasciata* mosquitoes down there. There is no such danger. The main thing, Mr. Chairman, is that for the port of New Orleans it is not possible to establish a harbor of refuge. Even if they should except, as I believe the committee are willing to make that exception in regard to having a station in the Mississippi River 20 miles distant from any habitation and 90 miles distant from the city of New Orleans, they can not establish a harbor of refuge within a reasonable distance without going off so far that the steamship lines would simply avoid the port of New Orleans.

The CHAIRMAN. How near is this to the line of vessels departing from and approaching New Orleans?

Doctor KOHN. Eight miles; and it has never been urged or claimed that the *Stegomyia fasciata* mosquito will travel more than fifty, or

at the outside, one hundred yards. That shows to you that there can not possibly be any danger. In fact, it has never been known since the quarantine station was established, of a case of infection coming from that lazaretto.

I want to say, Mr. Chairman, that, to give some little emphasis to what I have told you on this question, I was connected with the State board of health of Louisiana, and the law required that all the members should be physicians. I was a member of the board under Governor McEnery, now Senator McEnery, for six years, and I had something to do with the establishment and operation of that station; and I can tell you that ever since that station was established there has never been proven to have been a case of yellow fever that has entered the Mississippi River, except possibly last summer, and that has not yet been determined.

Mr. MANN. But, Dr. Kohn, you speak of New Orleans. How about Galveston and Mobile? If it will destroy the commerce of New Orleans to compel these vessels to go to Dry Tortugas, will it not also destroy the commerce of Galveston and Mobile?

Doctor KOHN. I have no doubt that Galveston views the question in the same manner. They will also come to you. I am not familiar with the topography of the coast there, or whether they have a harbor of refuge there or not.

Now, Mr. Chairman, in answer to that question, I have confined my objections to this bill entirely to the interests of the city of New Orleans. I had the pleasure of meeting, this morning, Doctor Goldthwaite, the chief quarantine officer of the city of Mobile, and I told him I was going to appear before your committee if an opportunity presented, and I wanted to know what Mobile was doing. He said Mobile was resting quiescent, but he admitted that these words "on the Gulf coast" should be eliminated, and he also admitted that some provision should be made for the protection of his port. But the citizens of Mobile have not deemed it necessary to join us in this visit to you.

I do not know that I am to fight their battles, but I believe, gentlemen, if you want to do justice to the entire country, and further the passage of this bill with the amendments that have been suggested, that due regard should be had to all the ports. Otherwise it will be a hardship upon many of them, and may destroy the possibility of their maintaining trade relations that are necessary for their growth and necessary for the benefit of their cities and the commerce of their ports.

Now, if there is any other question any gentleman has to ask, I would like to answer it.

Mr. STEVENS. I notice in section 1 there are two different ways of acquiring property. One way is where the United States owns the property in some department, and, another, where individuals own the property and it is desired to be acquired, and the third method is provided in section 6. Is there any way of informing the committee of the probable amount of property now owned by the United States which would be turned over to this Surgeon-General, or the amount that might be necessary to be acquired from individuals, or the amount that would be acquired from the States, so that the committee could know with some sort of definiteness about what might be expected to be done under this bill?

Doctor KOHN. I will answer for the State of Louisiana. The quarantine station on the Mississippi River and the Lazaretto are entirely the property of the State of Louisiana, and whatever action might be taken by the United States Marine-Hospital Service, with the advice and consent of the Secretary of the Treasury, would have to be done in the same manner as was done with the State of Florida. As Senator Mallery told me last November, a proposition has to be made to both sides, and in the case of Louisiana it would have to be submitted to the State legislature, which meets next May; and I believe the citizens of New Orleans will see to it that the proper transfer will be made in the regular way. Of course, the State has expended a great deal of money on the plant itself. I do not think there will be any difficulty, however, to reach an agreement upon a sum that will be entirely satisfactory to both the State of Louisiana and the United States Marine-Hospital Service.

The CHAIRMAN. Probably what amount?

Mr. BARTLETT. That would require action on the part of the State?

Doctor KOHN. Yes.

Mr. BARTLETT. When is your legislature in session?

Doctor KOHN. In May.

The CHAIRMAN. About what amount would be demanded?

Doctor KOHN. I would suggest, Mr. Chairman, that you ask your neighbor there, General Meyer.

Representative ADOLPH MEYER, of Louisiana. I have no idea on the value of the plant there.

Mr. SANDERS. There is lots of swamp land there. The only necessity would be to build the residences for the physicians and attendants. The land could be had for a few dollars an acre. I should say \$50,000 in all would cover the expenditure at the mouth of the Mississippi River for the actual plant, speaking off-hand.

Doctor KOHN. I hesitate to say, Mr. Chairman; but I think, myself, that would be considered a fair price. The Representative from Texas [Mr. Russell] might express an opinion regarding—

Mr. GAINES. Would it be practicable to build a health station in a swampy place? It would be very unwholesome, would it not?

Doctor KOHN. It would have to be filled up. It would cost some money. Nobody is competent to name a figure; but I think the State legislature of Louisiana is amenable to the influence of the citizens of the State who are anxious to have this bill pass and anxious to have the control of the maritime quarantine transferred to the United States Government, for the reasons mentioned by the other speakers, and for reasons that I wish to repeat, because the United States Government, by its large relations and connections with these tropical ports, and its other facilities, and the money that it has at its command, is more competent to handle this situation than any State or community.

Mr. STEVENS. Would not the existence of such a station as you describe, 8 miles from the line of travel in the river, interfere somewhat with the suggestion of Mr. Sanders that this bill was intended to inspire confidence?

Doctor KOHN. No. It is in another pass—the Pass a la Loutre.

Mr. ADAMSON. We are speaking of the harbor of refuge. Is it the consensus of opinion of your people, both here in the delegation and at home, and of the doctors who have studied the subject, that to make

a harbor of refuge of your Lazaretto would be a due precaution for the safety of that country?

Doctor KOHN. Yes. I have not heard a single expression to the contrary. I was, as I told you before, since 1890, connected for six years with the board of health, and after my retirement, immediately, I was elected chairman of the committee on quarantine of the board of trade of New Orleans, and that board is composed of large houses in commercial and shipping pursuits, and never have I heard of a single instance—and of course you will naturally understand that I have come continuously in contact with all the doctors and health officers who have had to do with yellow fever—and at no time have I heard a doubt expressed as to the efficacy of that Lazaretto and the possibility of danger. It has never been hinted at.

Mr. STEVENS. Do you think your confidence would be shared by the people of Arkansas and Indian Territory and Texas?

Doctor KOHN. I think and believe if the Marine-Hospital Service of the United States will find, after investigation of all the facts, if they have not already done so—if they find that what I have stated here is the fact, and they will accept it as such, and they will work in accordance with the facts as they find them—there will be no question of the wisdom of the United States Government or of the United States Marine-Hospital Service, particularly, because, Mr. Chairman, it is impossible to maintain the present commercial lines with the port of New Orleans—and this means traffic which is expected to grow yearly—without giving the facilities of a substation or a harbor of refuge within a reasonable distance of the main ports to which these vessels are bound.

Mr. ADAMSON. Mr. Williams's construction of this bill here is that it vests in the Federal authorities the right to select other harbors of refuge where necessary.

Doctor KOHN. Yes; I think Mr. Williams is entirely right; and I would admit that some parts of the bill cover the point I have mentioned and other parts do not. Why not in your wisdom make the entire bill uniform, and not contradictory? Because if you say in one part it must be located within 35 miles, or as near that as possible, that may create some quibble. An important port like New Orleans, representing as it does all the ramifications of the banks, and the real estate, and the wholesale and retail houses and the owners of property, should be so protected with special provisions as to help that port and make it possible for the United States Quarantine Service to maintain its service at such a reasonable distance as not to drive away the commerce between that port and the South and Central American ports.

Mr. MANN. If you have special protection for New Orleans, should you not have it also for Galveston and Mobile?

Doctor KOHN. If it is necessary, I should say yes. From Galveston it would be 550 or 600 miles to go from Dry Tortugas. Think of it! If a female *Stegomyia fasciata* should make its appearance during a voyage and inoculate an innocent passenger, that vessel would have to travel 1,100 miles to go and come there. Would not that eliminate the entire trade and traffic, and would not the owners of that steamship line say, "The risk is a little too big?"

Mr. MANN. I can see readily how it might add to the commerce of Tampa. [Laughter.]

Doctor KOHN. Yes; and also Georgia ports.

Mr. ADAMSON. It looks light a fight between commerce and health.

Doctor KOHN. Yes; it includes both. But why impose hardships that are unnecessary and uncalled for?

Mr. STEVENS. How is it possible that an infected ship from Honduras, being sent to the Lazaretto, would injure the commerce of New Orleans? Would not the effect be to inspire confidence if it were sent some little distance away? Suppose a ship comes in badly affected with yellow fever, and it is sent to some distance, would not that inspire confidence, in itself, more than if it were sent to a close distance?

Doctor KOHN. It would inspire confidence, but that steamship line would go out of existence.

Mr. STEVENS. Only one ship would be sent away.

Doctor KOHN. If there is infection in Honduras and a regular line runs from there, and in addition to that regular line steamers from Hamburg and Bremen or Liverpool touch those ports and then come to the port of New Orleans to get their cargo of cotton—if they feel that unfortunately a case of yellow fever could develop on board their ship, and in addition to being detained six days in the harbor they would have to go 800 miles away, they would say, "There is too big a risk," and they would go to some other port.

The CHAIRMAN. Would there be any difference in the measure of safety in a distance of 800 miles and a distance of 4?

Doctor KOHN. No, sir; not an atom.

Mr. DAVEY. Now, Mr. Chairman, I want to introduce Mr. John M. Parker, a cotton merchant of New Orleans.

**STATEMENT OF MR. JOHN M. PARKER, COTTON MERCHANT,
NEW ORLEANS, LA.**

Mr. PARKER. Mr. Chairman and gentlemen of the committee, we are factors, and brokers, and lawyers, and merchants, and business men of New Orleans. We come here to appear before you to ask your speedy and favorable action in the matter of the Williams bill, and we would go further than that, and urge that you will give us all the support you can to promote the early passage of this bill through the House.

Few of you gentlemen who have never seen the baneful effects of the wild panic and stoppage of business that follow upon an outbreak of yellow fever down in our country can realize the destructiveness and the dreadful character of the conditions which we have to contend with.

Until you are familiar personally with those conditions you will probably wonder why we come here to urge immediate and prompt action at your hands upon this legislation. Last year, to give you an example, business was absolutely paralyzed for a while. Railroad trains were prevented from running, and the few that ran were compelled to screen and go through certain places at high rates of speed per hour, while in other places railroad trains were taken off entirely for a period of sixty or ninety days, thus absolutely shutting off all communication, except through the United States mails.

Some of the States down there, by means of shotgun quarantines, absolutely shut off all communication with their neighboring States.

There were two places—Lake Providence and Tallulah, La.—where the conditions were worse than they were anywhere else, and at those places the people were utterly unprepared to handle the epidemic, and those two localities were for two weeks practically shut off from communication with the world, except by telegrams. Afterwards, when the United States Marine-Hospital Service took charge of the conditions there, they not only succeeded absolutely in stamping out the disease by the time we had frost, but they now hope that we will have no recrudescence of the infection there.

There were probably 200 foci there when they came there to take charge of it. But immediately the uniform of the United States Marine-Hospital doctor gave to that man instantly a respect on the part of the people which the local doctors could not possibly inspire or get, and statements were made by physicians in our surrounding territory, where unfortunately the reports of the local boards of health had been received with suspicion, that the appearance of the Marine-Hospital Service doctors immediately inspired confidence. The Marine-Hospital doctor is a disinterested official, and he is there with no hopes or fears—no hopes of future advancement or future advantage, and no fears of offending neighbors and business associates; and he is there simply to do his duty.

Gentlemen, we are absolutely willing to trust a Marine-Hospital officer. The minute our people knew that the regulations were under the control of the Marine-Hospital Service there was a feeling of reassurance. I have the assurance of gentlemen from Mississippi and Alabama, and some from Arkansas, that they did not propose under any conditions to interfere with cases that have been under the control of the national quarantine officers, provided the Marine-Hospital Service say those cases have been subjected to inspection and control.

We think we have had a splendid education with respect to that matter in the South by our experience last year, and that plan of education has been handled absolutely by the Marine-Hospital Service, who have had absolute charge and control of it. A large number, I should say over 90 per cent, of the people of New Orleans and the people of the State of Louisiana, and an immense number in the State of Mississippi, from which the distinguished Representative, Mr. Williams, comes, will gladly welcome any legislation of this kind, and we believe that the United States alone not only has power, but has the means to carry out such regulations as will prevent the introduction of yellow fever or any other disease into our country.

Mr. SANDERS. Mr. Chairman, we are through, and we are very much obliged, indeed, to you and to the committee for the attention you have given to this matter, and we very urgently hope you will take it up and give us prompt relief.

The CHAIRMAN. Doctor Wyman, I would like to ask you two or three questions, if you please.

Doctor WYMAN. Very well, sir.

The CHAIRMAN. Suppose this bill would be enacted into law, what would probably be the expenditures under it within the next twelve months?

STATEMENT OF DR. WALTER WYMAN, SUPERVISING SURGEON-GENERAL OF THE PUBLIC HEALTH AND MARINE-HOSPITAL SERVICE.

Doctor WYMAN. The expenditures under it would refer either to the purchase of plants or the erection of new plants, and in a very rough way I suppose that to obtain possession of all these plants—they are not very numerous or expensive—I imagine that about \$250,000 would be required for that purpose.

The CHAIRMAN. If you had the authority that is conferred by this bill, what plants would you recommend the acquisition of?

Doctor WYMAN. Galveston, New Orleans, Mobile, Charleston, and one other, Port Arthur, in Texas.

The CHAIRMAN. Would the acquisition of those plants that you have now in your mind include a harbor of refuge 35 miles distant from any port?

Doctor WYMAN. There are only two harbors of refuge that we might possibly need in addition to those that we have. I do not know that a harbor of refuge would be needed for Galveston. It might be. The other harbor of refuge is Dry Tortugas, which, I think, we ought to have.

The CHAIRMAN. What would be the cost of providing the necessary buildings and facilities for the harbor of refuge at Dry Tortugas?

Doctor WYMAN. There are already so many buildings there that I think the cost would be relatively small, and I believe we already have an appropriation that could be expended for it.

The CHAIRMAN. What would be the amount?

Doctor WYMAN. I have not made a definite estimate.

The CHAIRMAN. Have you an approximate idea?

Doctor WYMAN. I think \$50,000 would be a rough estimate.

The CHAIRMAN. What would be the cost of acquiring the harbor of refuge near Galveston?

Doctor WYMAN. I have no idea. I do not know that we could find a place to have one there.

The CHAIRMAN. What is your idea of the cost of acquiring the grounds and constructing the buildings at Galveston—not the harbor of refuge?

Doctor WYMAN. I think we could put a quarantine station there for \$30,000 or \$40,000.

The CHAIRMAN. And acquire the land?

Doctor WYMAN. And acquire the land, possibly.

The CHAIRMAN. What would be the cost of acquiring the station at New Orleans? I mean completing it for service?

Doctor WYMAN. You mean putting up a new one of our own, or purchasing?

The CHAIRMAN. Putting up a new one of our own.

Doctor WYMAN. Well, to put up a new plant there—it is very difficult to answer that question, because of want of knowledge of the location; but if we were to put up a new station there there are so many questions involved with regard to the depth of water and landing facilities and land for erection of detention barracks, and so forth, that it is hard to make even a rough estimate. But I believe

we could make arrangements with the State authorities of Louisiana for the purchase of that plant.

The CHAIRMAN. At what cost?

Doctor WYMAN. I would not like to name a sum here that would commit me if we had to purchase that property. [Laughter.]

The way to arrange it, Mr. Chairman, would be to have an appraisement made. That is the way we have done heretofore; the State to name one appraiser and the Treasury of the United States another, and those two to propose a third, and, after a careful examination of the property, to make a just appraisement. If you want a rough idea, you might say \$100,000.

The CHAIRMAN. At Pensacola?

Doctor WYMAN. We own that already, sir. That is a national quarantine.

The CHAIRMAN. At Mobile?

Doctor WYMAN. If I am correctly informed, I believe Mobile is on Government property already. In a rough way, perhaps, \$40,000 or \$50,000 would be necessary there.

The CHAIRMAN. What do you say about the question of the comparative freedom from peril of a harbor of refuge 8 miles, or 400 miles, from the line of travel of vessels of commerce?

Doctor WYMAN. I think that with modern quarantine methods the quarantine stations can be much nearer the ports than used to be considered necessary. So far as actual scientific safety is concerned, I think there is very little difference between 8 miles and 35 miles. Sometimes other questions come in—the effects upon neighboring property, and the prejudices and fears of the people.

The CHAIRMAN. Well, you heard the gentlemen here discussing the station at New Orleans, or near there. They have stated it to be 8 miles from the line of travel of commerce. Would you regard that, under the circumstances which environ that case, as being a safe distance?

Doctor WYMAN. Yes, sir.

The CHAIRMAN. Do deep-draft vessels get into that port at that place?

Doctor WYMAN. Yes; I am informed that they do. I have visited the quarantine station.

The CHAIRMAN. Would that point, in your judgment, meet all the demands required by a harbor of refuge, such as this bill contemplates?

Doctor WYMAN. For New Orleans, yes, sir.

The CHAIRMAN. What do you think about the effect of the location with reference to the confidence and feeling of security of people living farther up the valley?

Doctor WYMAN. Well, Mr. Chairman, I have never heard any complaints about the outfit—about the location of the plant at the New Orleans quarantine. I have never heard that it was considered dangerous at all in its arrangements.

The CHAIRMAN. That is all I desire to ask.

Mr. MANN. Doctor, as I understand it, the State of Louisiana now owns this quarantine station at New Orleans?

Doctor WYMAN. Yes, sir; the State of Louisiana.

Mr. MANN. They are now performing the quarantine service there?

Doctor WYMAN. Yes, sir.

Mr. MANN. If it is turned over to your department the United States Government will perform that quarantine service?

Doctor WYMAN. Yes, sir.

Mr. MANN. The performance of that service is now an expense to the State of Louisiana?

Doctor WYMAN. Yes, sir.

Mr. MANN. If we took it we will relieve them of that expense?

Doctor WYMAN. Yes.

Mr. MANN. Why should we pay them, then, for that property?

Mr. DAVEY. The State of Louisiana does not appropriate more than \$5,000 for the State board of health. The quarantine service is conducted from the proceeds of fees from the fumigation of vessels.

Mr. MANN. Is there any profit to the State of Louisiana in it?

Mr. DAVEY. I don't know whether there is any profit. I do not think the legislature appropriates over five thousand dollars.

Doctor WYMAN. Mr. Chairman, I hope I may be allowed to correct myself. As it is being conducted by the State, the State collects the fees.

Mr. MANN. Is it a matter of profit to the State?

Doctor WYMAN. I do not know.

Mr. MANN. If the State of Louisiana is so anxious to have the Government take charge of the quarantine service there, why should they not give that land to the Government?

Doctor WYMAN. I can not answer that.

Mr. ADAMSON. Have other States done that, or did you pay for all you acquired?

Doctor WYMAN. We have paid for them, but we have acquired them under the law as it exists now. That authorizes the Secretary of the Treasury to lease at a nominal rate, when the State authorities agree to give it up. In doing that they have requested that we appraise the value of their plant, which has been done, and then a recommendation has been made to Congress to appropriate for the cost of the property.

Mr. ADAMSON. In some way or other, then, the Government has paid for them?

Doctor WYMAN. Yes. They paid for the Florida quarantines and the Savannah quarantine.

Mr. MANN. But that was by a special appropriation by Congress?

Doctor WYMAN. Yes; by a special appropriation.

Mr. MANN. Here is a proposition to give you or the Secretary of the Treasury unlimited authority to incur expenses up to millions, if you wish. That is unlimited authority, it seems to me.

Mr. STEVENS. Doctor, in the first section of the bill it is provided—

That in cases in which the title to the land and water so selected and designated is in the United States it shall be the duty of the department, bureau, or official of the United States having custody or possession of such land and water, or any part thereof, on demand of the Secretary of the Treasury, to deliver the same into his custody and possession, for the use of the Public Health and Marine-Hospital Service, evidencing such delivery by a suitable instrument in writing to be delivered to the Secretary of the Treasury.

Do you know of any such property belonging to the United States, belonging to other departments of the Government, that you wish to demand under that authority?

Doctor WYMAN. Only one, and I think that is the one intended—Dry Tortugas.

Mr. STEVENS. That is the only one you know of?

Doctor WYMAN. Yes, sir.

Mr. STEVENS. What Department has the title?

Doctor WYMAN. The Navy Department.

Mr. STEVENS. And there is no other on the mainland?

Doctor WYMAN. No, sir.

Mr. MANN. Would the Navy or other Departments have any objection, under the provisions of this bill, to your requiring them to turn over to you any property which you want?

Doctor WYMAN. I have not had any conference with them at all. Of course, the Secretary of the Treasury would have to make the request, and it might go eventually to the President. If we wanted to take a fort, for instance, under that we might have difficulty in doing it.

Mr. MANN. Does it have to go to the President?

Doctor WYMAN. He is the Chief Executive, and if the Secretary—

Mr. MANN. He might get a new Secretary of the Treasury, it is true, but does not this bill give the authority to the Secretary of the Treasury to take it, whether the War Department or the Navy Department or some other Department wants to give it up or not?

Doctor WYMAN. It seems rather broad to me.

Mr. STEVENS. That would be the law.

Mr. MANN. Doctor, does your estimate of \$250,000 include all your estimates?

Doctor WYMAN. For the purchase of all these plants?

Mr. MANN. For acquiring all the plants that are necessary under this bill.

Doctor WYMAN. I would not like to commit myself to that small amount. I was not expecting to appear before this committee this morning and make these estimates, but I thought, mentally, that between \$300,000 and \$400,000 would acquire these plants, or put up the necessary ones.

The CHAIRMAN. What would be the annual expense of maintaining those plants you have in mind now—those plants that would be acquired under this act?

Doctor WYMAN. I have made an estimate of that, and it would be about \$200,000 annually in addition to our present quarantine expenditures.

Mr. MANN. Do they have a quarantine service at Gulfport, Miss.?

Doctor WYMAN. Ship Island is the station. We have an officer at Gulfport, working in conjunction with the island.

The CHAIRMAN. What is the total amount of expenditure for the Public Health and Marine-Hospital Service, Doctor, for this fiscal year—the whole expense of the Bureau?

Doctor WYMAN. About \$1,700,000 a year. But you must recollect what that means. It is a very broad question. It means the care and treatment of sailors in the marine hospitals and relief stations, and our scientific laboratory, which is doing a great deal of public-health work, the quarantine service in the United States, Hawaii, and Porto Rico, and the prevention of the introduction and the suppression of epidemic diseases.

Mr. MANN. Is any portion of that collected in the shape of fees?

Doctor WYMAN. No.

Mr. MANN. Do you charge any fees for the quarantine service?

Doctor WYMAN. No, sir.

Mr. MANN. Where there is a Government service there is no expense to the ships, and where the States maintain a service there is?

Doctor WYMAN. Yes.

The CHAIRMAN. To your knowledge, has it happened at any time, when a vessel has been inspected by the Marine-Hospital Service and the quarantine service and has been fumigated and passed, that State authorities have then immediately and within a very short time required the vessel owner to submit again to the same inspection and fumigation, for which fees have been charged?

Doctor WYMAN. Yes, sir.

The CHAIRMAN. Is not that a common practice at the port of New York, for instance?

Doctor WYMAN. No, sir; not at the port of New York, because we do not quarantine for the port of New York.

The CHAIRMAN. You do not?

Doctor WYMAN. No, sir. New York is a State quarantine.

Mr. STEVENS. Where is this done?

Doctor WYMAN. Well, it has been done; for instance, a few years ago at Port Townsend, Wash.; it was done also at one time at San Francisco. It is not done at either of those places now. It has been done on the Delaware River, where we have a quarantine at Reedy Island for the port of Philadelphia.

Mr. MANN. So that, Doctor, if you could not make an arrangement under the provisions of this bill and acquire the New Orleans quarantine station and should erect one for the Government, and you should examine a vessel and pass it, the State quarantine officers would probably also examine it for the sake of the fees?

Doctor WYMAN. Yes; but there is a provision in there that if we should put up a quarantine station alongside of the quarantine station of the State, then no State authority should be allowed to charge any fee for quarantine service.

Mr. ADAMSON. Suppose that provision is not constitutionally worth the paper it is printed on, what then? Is not this the more rational view to take of it, that if you do your duty as efficiently as you have been doing it, no State would deem it necessary to establish another quarantine?

Doctor WYMAN. No, sir; if there would be fees connected with it, I do not agree with you.

Mr. ADAMSON. The only places you have mentioned so far where State authorities have interfered with your functions are up in the northern country, as you say?

Doctor WYMAN. Yes; but that is because we have not had the opportunity in the Southern ports.

Mr. ADAMSON. I merely wanted to bring out the fact that the fee habit is not local. [Laughter.]

Mr. MANN. Out of what fund was the expense paid incurred last summer for your service in connection with the yellow-fever epidemic in the South?

Doctor WYMAN. Out of our epidemic fund.

Mr. MANN. How much is it annually?

Doctor WYMAN. It is a continuing appropriation. That is added to from time to time by Congress in the sundry civil appropriation

bill. We have an estimate in this year of \$300,000. We will have, at the close of this fiscal year, about \$125,000 left.

Mr. MANN. Was any portion of that expense paid by the city of New Orleans?

Doctor WYMAN. We made an agreement with the citizens of New Orleans by which we paid the expenses of all the officers; but the material and labor were paid for by the citizens of New Orleans.

Mr. MANN. All you paid was the salaries of the public health officials?

Doctor WYMAN. Yes.

Mr. MANN. And the local people paid the expenses of all the work and material?

Doctor WYMAN. Yes; the labor and material.

Mr. MANN. How did they do that?

Doctor WYMAN. By patriotic movements among themselves in collecting funds.

Mr. MANN. Did they pay the money to you?

Doctor WYMAN. Locally they gave it to my representative in New Orleans.

Mr. MANN. Was not that contrary to the statute?

Doctor WYMAN. I think not. He did not handle the money at all. I do not think it is contrary to the statute.

Mr. MANN. The statute prohibits the Marine-Hospital and Public Health Service from either receiving services or money.

Doctor WYMAN. They had committees, with chairmen, and our officers practically superintended the work of those committees.

Mr. MANN. You understand I am not criticising what you did. I supposed at the time that you did the whole thing contrary to law. [Laughter.]

Doctor WYMAN. Those bills never came officially or otherwise to anybody up here.

Mr. BATES. You do not mean to say that any official of the United States got any extra pay?

Doctor WYMAN. No; not at all, either directly or indirectly.

Mr. ADAMSON. Would it not be more effective to incorporate this kind of a proviso—that in case the local authorities insisted on duplicating the service and charging fees the Federal service shall be withdrawn until the local authorities see fit to cease doing that?

Doctor WYMAN. I think it would be better to reach it in another way.

Mr. ADAMSON. I am just trying to reach it by a way that the Constitution will sanction. That is all.

Mr. MANN. You think, as a matter of fact, that there would not be very much danger down there under the circumstances of their having duplicated plants or duplicated examinations?

Doctor WYMAN. I do not think duplicated plants would result from this, because if we would say we would put up the plant this bill demands of the Surgeon-General that he shall pick out a place where the quarantine is necessary. Now, if there is a plant already there, it does not make any difference within the meaning of this bill. I have got to recommend the erection of a national plant anyhow, and when the local authorities are informed that there is going to be a national station put up alongside of theirs, and after it is going they will not be allowed to charge fees under this bill, as I interpret its

meaning. Then, of course, without the fees they will have nothing to sustain their quarantine administration and it would fall.

Mr. MANN. Then the provision in this bill authorizing you to condemn and erect a new plant is a safety provision to prevent any possible attempt of a hold-up?

Doctor WYMAN. Well, that is for each one to judge. I did not draw this bill, Mr. Mann, understand. That is the interpretation of it, as it seems to me, as I have given it to you.

Mr. GAINES. Doctor, may I ask you this question: Have you any changes to suggest in this bill?

Doctor WYMAN. Any of my opinions in regard to it would be personal. I would have to give personal opinions, and I would not like to take up such a weighty matter as that verbally or right off-hand. There are some amendments that have been suggested by the gentlemen here that I think would probably be wise, but I would not like to take the bill up here and suggest amendments without further consideration.

Mr. MANN. Doctor, I suppose the first four lines of section 7 have your approval? [Laughter.]

Mr. SANDERS. Mr. Chairman and gentlemen, you have been very kind and patient, and have given us a very full hearing, and we appreciate it. I will now ask you to bear with us for a few minutes further in order to hear Mr. Britton, of the New Orleans Cotton Exchange.

The CHAIRMAN. We will hear you.

STATEMENT OF MR. ABE BRITTON, PRESIDENT OF THE NEW ORLEANS COTTON EXCHANGE.

Mr. BRITTON. Mr. Chairman and gentlemen of the committee, I hardly feel it advisable to vex further the patience of this committee. This subject has been so thoroughly thrashed out that I presume it is now thoroughly understood by all of you. But we left our several businesses to come here and implore this committee and the Congress of the United States to give us a national quarantine bill.

Primarily we feel that the duty devolves upon the General Government to protect the health not only of the southern parts of this country, but the entire coast, where it can better do it and subserve that purpose better than any State or local authority can.

I have the honor to represent the largest commercial interest in the State of Louisiana, for a number of years as president of the cotton exchange—a body consisting of 450 members; and they feel, I think, unanimously as I do, that because our organization represents a larger commercial interest than any other 450 men on the American continent, and it is the duty of Congress, as I say, to protect the health of our country if it can better protect it than the local authorities can, so that we can be perfectly secure by the Government guarding the approaches of the Mississippi River from this foreign foe.

We have been infested by epidemic diseases brought in by sister States, and the opinion prevails that if one State does not prevent the introduction of that disease another State may be equally lax. In 1897 I had the honor to serve as acting mayor of New Orleans, and in a single day the disease was introduced from Mississippi, and 300 or 400 foci were established in a day. Yellow fever had prevailed in the

town of Ocean Springs, and had been there for four weeks, and it was made known in a single day that that was the disease. It had been described previously under different names. But on that day three or four train loads of people were brought into the city of New Orleans and scattered in every direction. We have had trouble from other States, Alabama and Texas, and thereby the yellow fever has been introduced when we have been perfectly secure against the invasion of it from the Mississippi River.

The Federal authorities are thoroughly equipped, and the Government has in the Marine-Hospital Service men whose lives are devoted to this one purpose of protecting human life. They have dealt with the bubonic plague and effectually stamped it out in San Francisco. They have dealt with yellow fever in Laredo, Tex., and stamped it out there. They have dealt with it in New Orleans last year, and stamped it out there.

I had the privilege of presiding over a committee which passed resolutions invoking the governor of our State and the mayor of our city, who were particularly responsible, to take immediate steps to remedy the then prevailing situation, when the question was raised that the people would not surrender to the United States Government. But I say to you that whoever has been in the midst of a yellow-fever epidemic—and it has been my fortune to have resided in New Orleans ever since the great epidemic of 1853, and it is my judgment that there never was and never will be an instance where, during the prevalence of an epidemic, the people in whose midst it exists will not be glad to have the United States Government take charge of the situation as it finds it.

But over and beyond that, we might care for yellow fever and deal with it as effectively and efficiently as the United States Marine-Hospital Service. Grant that, if you will; but I say to you if saints from Heaven were composing the State boards of health of Louisiana—I say this frankly, because I believe it to be true—the sister States of Alabama, Mississippi, Arkansas, and Texas would not even then believe their statements. What we need, above all, is to have an authority whose statements will carry weight and belief and acceptance.

We are now just at the beginning of the season. On the 14th day of March the governor of our State will issue a proclamation making effective a quarantine against Central American ports—infected ports of that part of the country. Now just at this moment we are impelled to come here, because, I tell you frankly, a feeling of unrest and uneasiness prevails in our community—not that we are going to be infected by disease, but that the commerce of that town and its happiness and its enterprise are likely to be affected by the belief that will exist in the sister States that we may be infected, or may be likely to become infected with the disease, when we feel that we are secure against the invasion of the disease. And if it should be that we had a sporadic case of the disease there, it would be suppressed and stamped out. But, nevertheless, they act, and would act, as if we were actually infected, and because of that the loss to us and the detriment to our interests would be just as great as though we had an actual epidemic there. And it is this want of confidence, I know, that brings about such tremendous loss and such a dreadful disruption of business.

I have gone through all the epidemics we have had there since the civil war, and I know that the United States authorities are respected, and that their statements will carry weight with our people—a weight which the statements of our local boards will not carry; and the ability and the insignia of the men who are charged with this duty, men wearing the uniform of the United States Government, gives them entry and respect everywhere, whereas the local authorities do not receive it.

Mr. ADAMSON. Will it disturb you for me to ask you a few questions?

Mr. BRITTON. No, sir.

Mr. ADAMSON. In consideration of receiving for yourself and all of us the protection which you ask, and which you have the right to ask, as I believe, there is a place where this subject of additional State quarantine and fees can be constitutionally controlled. Can not your people control that question and prevent by law the establishment and exercise of local quarantine and the charging of fees as long as the Federal Government maintains this quarantine?

Mr. BRITTON. That may be, but my idea is——

Mr. ADAMSON. The reason I ask is because of what has been said about it here.

Mr. BRITTON. Yes; and I have heard of State rights, and I do not know of any one here who has given more time and sacrifice and service to the upholding of that doctrine than I. But that went with the war.

Mr. ADAMSON. The question is whether you yourselves can not control that one objectionable feature, and by your own arrangement stop the practice of charging additional fees or maintaining a quarantine in consideration of the fact that the Government will take hold of it itself. Could you do it?

Mr. BRITTON. Possibly we could, but we have no legislature until May. The damage is done. What matters a few thousand dollars, more or less, if a great Government like the Federal Government could take charge of this? If the bubonic plague would break out at San Francisco or New York, the Government would spend millions of dollars to stamp it out. We of the South would be very glad to share our part of the burden in doing that.

I want to say this, that these 450 men composing the Cotton Exchange at the port of New Orleans export 100 million dollars' worth of property. That goes to settle the balance of trade in this country. Close up that port in September, October, and November, if you will, and I undertake to say you will cut off from the exports of this country 30 or 40 millions of dollars. I undertake to say that the delay in the export of the old cotton will affect the financial interest of every concern from Maine to Texas, and in that sense, in my judgment, it becomes a national question, and the people at large, it seems to me, are as much affected in that way in a commercial sense as we are. Of course they are not as immediate sufferers as we are.

My personal view, Mr. Chairman, is that I would be glad to see the Government take charge of this, not only as it relates to foreign relations, but also as it relates to interstate relations. I should wish it would prevail in every city and county and community throughout the whole broad land.

Mr. ADAMSON. Then ought you not to be willing to rid the subject of the additional quarantine and charges?

Mr. BRITTON. So far as that goes, I believe our people would pay almost any amount of money to the cause—

Mr. GAINES. You are willing to release these charges, Mr. Britton, and you say and think your own people are?

Mr. BRITTON. Yes. With an organization of 450 men, representing the New Orleans Cotton Exchange, who, I think, are unanimous in their opinion with me on this subject, there would be no question as to money. Our people have never refused to respond to an appeal of that sort.

Mr. ADAMSON. There is no dispute about that, if you will do it.

Mr. BRITTON. We will recommend to the legislature, if you will. But we are here chiefly to urge that this bill be not only passed, but speedily passed.

Mr. MANN. But, Mr. Britton, it is not possible for the National Government to have quarantine down there until they get a plant for it.

Mr. BRITTON. I understand that, but I have had some little things to do in a minor way, and it seems to me if this bill appeals to the committees of the House and Senate as it appeals to us, you will surely give it prompt and favorable consideration. Of course, we are very much prejudiced in this way, and we feel that if the gentlemen would devote some extra time to it they could take it up more speedily than otherwise would be the case.

I have lived in New Orleans for fifty years, and I have never experienced or witnessed in all that time such a feeling of unrest, such a feeling of uneasiness, as that which I know exists there to-day lest this Congress may not pass this measure and do it quickly. So far as I am concerned personally, I do not entertain any pessimistic views in regard to yellow fever. I believe that in the not distant future it will become an extinct disease. But I think this Government, under all the circumstances, could afford to expend a million dollars or two millions or five millions to protect a port like that of New Orleans, and, in my judgment, it would be a worthy thing.

Mr. MANN. In that view, do you not think the legislature of Louisiana could afford to turn this plant over to the Federal Quarantine Service for a nominal consideration?

Mr. BRITTON. That might be done. Yes, I do. I answer that question. I think they might.

Mr. SANDERS. Might I just reply to the question and say that, expecting and hoping that Congress would pass this law, it has already been recommended to the legislature at its next session, in May, that they increase the appropriation for the State from \$5,000 to \$30,000, so as to eliminate these charges if the Federal Government takes charge of the local quarantine?

Mr. STEPHENS. You state that it is possible that an epidemic might arise and not be controlled, and that during the months of September, October, and November cotton exports might decrease \$30,000,000 or \$40,000,000?

Mr. BRITTON. Yes, sir.

Mr. STEPHENS. Would that make any difference in the price received by the producer for his raw cotton?

Mr. BRITTON. It would, to some extent.

Mr. STEPHENS. It would increase the price to the local producer?

Mr. BRITTON. It would; yes, sir; because it would be hard to get it to market.

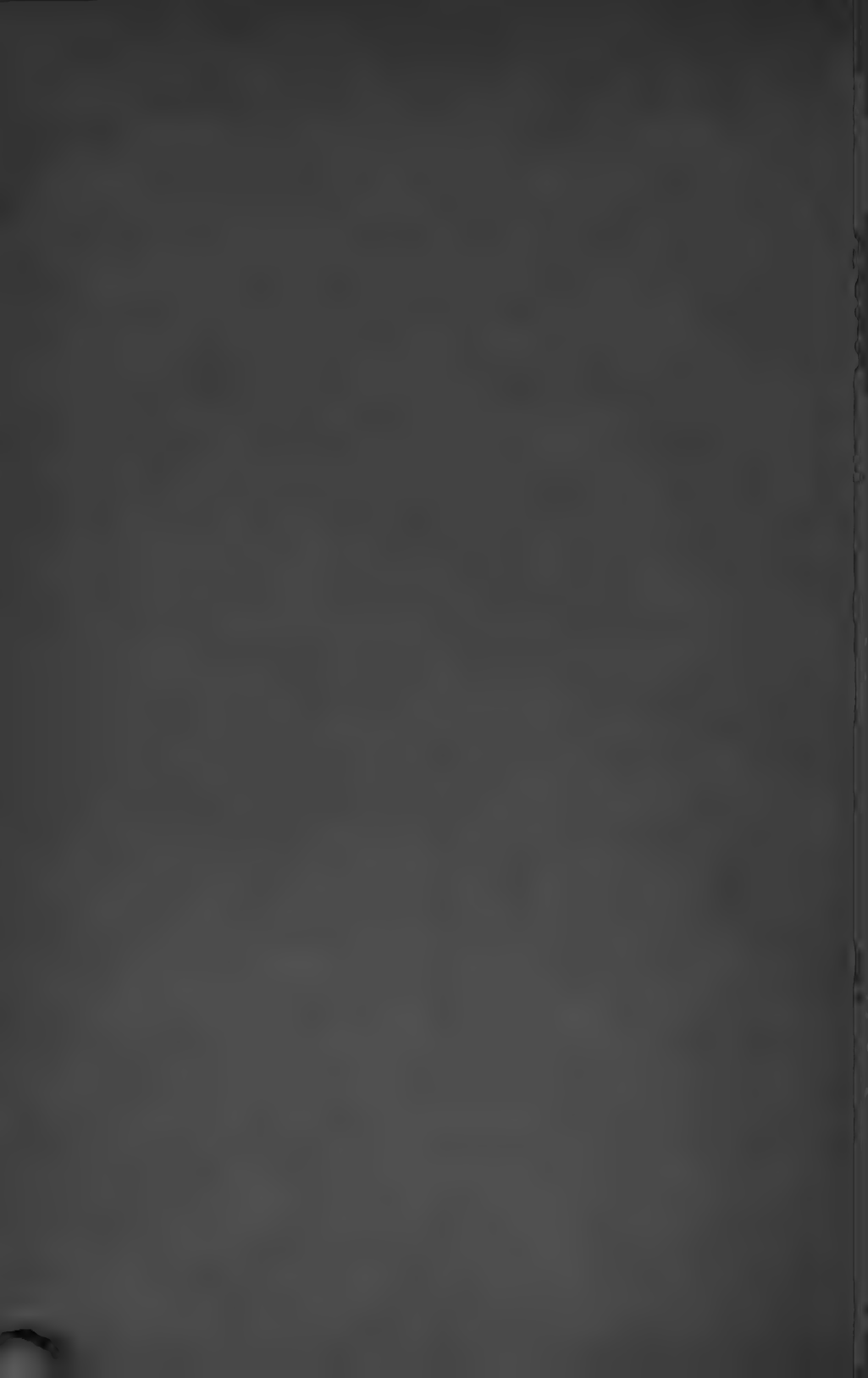
We are very grateful for this audience, Mr. Chairman, and I close by saying that if, consistently with your duties, you can do anything to speed the passage of this bill we assume that you will; we assume that you feel, as we do, the importance of this measure, and we will go home carrying with us very grateful hearts for any service.

The CHAIRMAN. After we get through with this hearing we will have a short executive session.

[Thereupon, at 1.15 o'clock, p. m., the hearing was concluded and the committee went into executive session.]







HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

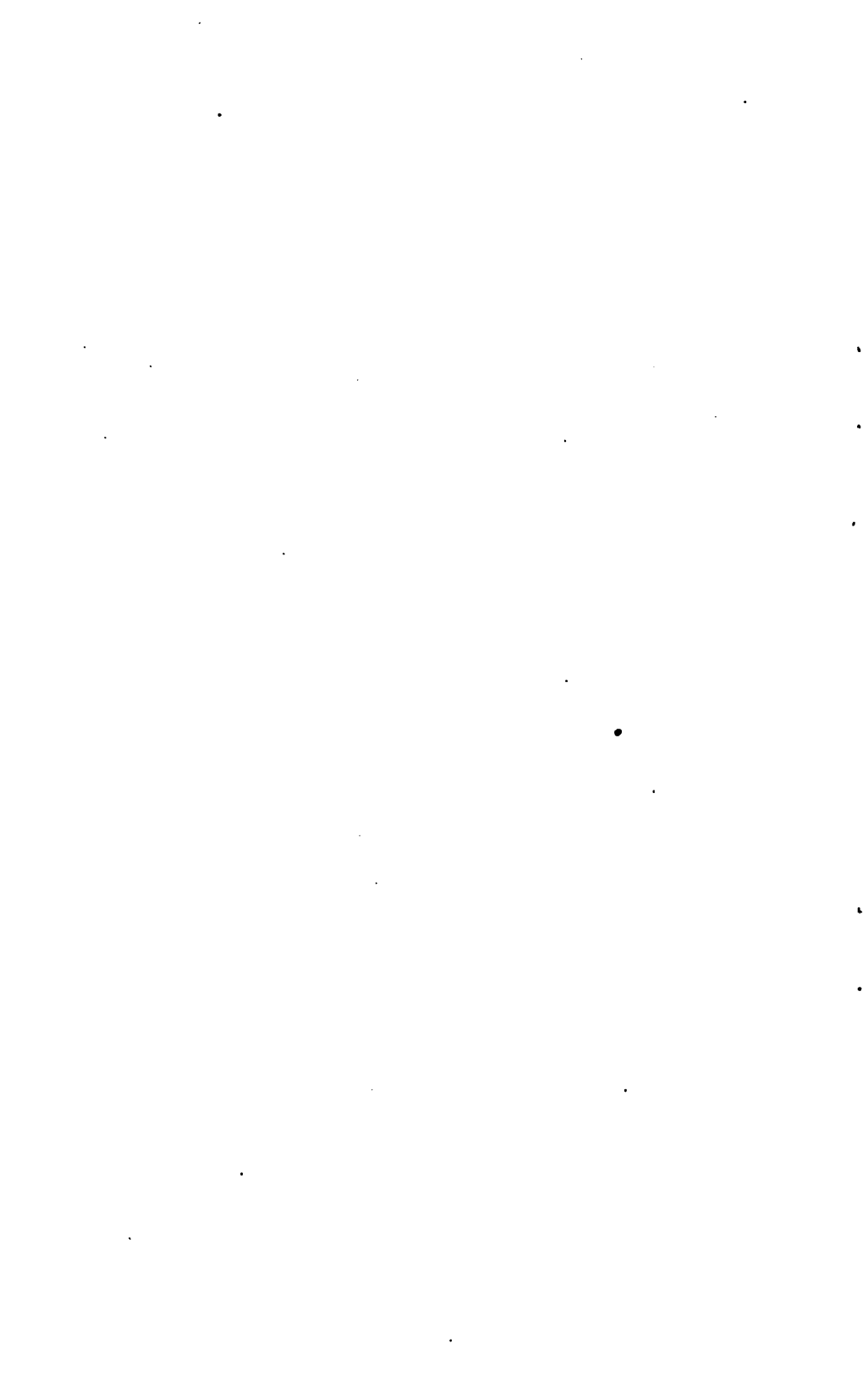
OF THE

HOUSE OF REPRESENTATIVES

ON

H. R. 14604, FORBIDDING THE IMPORTATION AND CARRIAGE IN
INTERSTATE COMMERCE OF FALSELY OR SPURIOUSLY
STAMPED ARTICLES OF MERCHANDISE MADE
— OF GOLD OR SILVER OR THEIR ALLOYS,
AND FOR OTHER PURPOSES.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1906.



HEARING ON THE BILL (H. R. 14604) FORBIDDING THE IMPORTATION AND CARRIAGE IN INTERSTATE COMMERCE OF FALSELY OR SPURIOUSLY STAMPED ARTICLES OF MERCHANDISE MADE OF GOLD OR SILVER OR THEIR ALLOYS, AND FOR OTHER PURPOSES.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., March 9, 1906.

The committee met this day at 10.30 o'clock a. m., Hon. James S. Sherman in the chair.

Mr. SHERMAN. Gentlemen, I am fearful that we will not have a quorum this morning, but that fact will not prevent us from hearing you gentlemen who have come here for the purpose of discussing the Vreeland bill, if you desire to be heard by those of us who are here. Of course the stenographer is present, and the hearing will be taken down and printed. It is apparent we will not have a quorum, and I think we might as well start at once.

STATEMENT OF HON. EDWARD B. VREELAND, A REPRESENTATIVE FROM NEW YORK.

Mr. VREELAND. Is it likely we will not have a quorum?

Mr. SHERMAN. I am fearful we will not. The chairman is out of town.

Mr. ESCH. This is pension day in the House and many people will not be in the House.

Mr. SHERMAN. If we have the hearing to-day it can be printed by next Tuesday or Wednesday. You can regulate the order of procedure, Mr. Vreeland, and introduce what speakers you like. I think that Mr. Vreeland should be sworn. [Laughter.]

Mr. VREELAND. Yes, and in view of the valuable property lying loose around here at this end of the table, I think it would be a good plan to have the members of the committee sworn also. [Laughter.]

Now, gentlemen of the committee, I have been of opinion that we would not need to argue this bill out at great length before this committee, for the reason that so many similar bills have been discussed before the committee heretofore. The laws relating to this subject are so familiar to all the members of the committee and the facts in connection with such a bill as this are so apparent to this committee, on account of the hearings they have had upon similar lines, that when they are put in possession of the intentions and details of this bill they

will already know about as much concerning it as the gentlemen who will appear before you.

This bill is for the regulation of articles manufactured of gold and silver, in part or in whole, which enter into interstate commerce, coming under the power of Congress through the regulation clause of the Constitution.

I might state briefly what the bill does. Its title is, "Forbidding the importation and carriage in interstate commerce of falsely or spuriously stamped articles of merchandise made of gold or silver or their alloys, and for other purposes."

Section 1 makes it—

unlawful for any person, firm, corporation, or association being a manufacturer of or wholesale or retail dealer in gold or silver jewelry or gold ware, silver goods or silverware, or for any officer, manager, director, or agent of such firm, corporation, or association to import or cause to be imported into the United States for the purpose of selling or disposing of the same, or to deposit or cause to be deposited in the United States mails for transmission thereby, or to deliver or cause to be delivered to any common carrier for transportation from one State, Territory, or possession of the United States, or the District of Columbia, to any other State, Territory, or possession of the United States, or to said District, in interstate commerce, or to transport or cause to be transported from one State, Territory, or possession of the United States, or from the District of Columbia, to any other State, Territory, or possession of the United States, or to said District, in interstate commerce, any article of merchandise manufactured after the date when this act takes effect and made in whole or in part of gold or silver, or any alloy of either of said metals, and having stamped, branded, engraved, or printed thereon, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which said article is incased or inclosed, any mark or word indicating or designed or intended to indicate that the gold or silver or alloy of either of said metals in such article is of a greater degree of fineness than the actual fineness or quality of such gold, silver, or alloy, according to the standards and subject to the qualifications set forth in sections two and three of this act.

Section 2 provides—

SEC. 2. That in the case of articles of merchandise made in whole or in part of gold or of any of its alloys so imported into the United States, or so deposited in the United States mails for transmission, or so delivered for transportation to any common carrier, or so transported or caused to be transported, as specified in the first section of this act, the actual fineness of such gold or alloy shall not be less by more than one-half of one carat than the fineness indicated by the mark—

That is, the committee will understand that we allow the manufacturer one-half carat leeway on account of the difficulties of producing the exact degree of fineness which they must mark upon the article. It may fall one-half carat below that mark without coming within the provisions of the bill.

The exceptions to this are watch cases and flat ware, and as to that we provide that they must be within three one-thousandths of the fineness marked upon the watch case or the article.

This is the Swiss standard that we have adopted. We have made it a greater degree of fineness in these articles for two reasons: First, because all the watchmakers of this country, great concerns engaged in making watches, who not only supply our domestic market but export a great amount, have agreed upon this Swiss standard which we have put in the bill. It is desirable to have the same standard here which they would use in their export trade. They do not want to have to make several different standards of watches.

We provide also in this section that in testing an article the part tested shall be taken from a part free from solder.

Now, gentlemen, the provisions of this bill, as they are presented to the committee to-day, are the result, I think I may say, of a great amount of pains and effort to ascertain what would be the correct standard to put into this bill. We have spent a great many months in having the manufacturers, the leading men in this business in the country, through their organizations and associations in the country, consult together and consult with us, and to take up each one of these sections line by line and endeavor to agree upon a bill which will be satisfactory to them and which would be a sufficient protection to the public.

I may say, gentlemen, that the bill presented here to-day, in all its salient features, meets with the best sentiment of those concerned in this industry in this country. The penalty is the only thing upon which there is any disagreement.

Mr. BURKE. Are the precious stones included among the articles which must be properly marked?

Mr. VREELAND. No; just the metals.

Mr. ESCH. What organization, Mr. Vreeland, if any, is working for this legislation?

Mr. SHERMAN. I was about to ask Mr. Vreeland that same question, and to ask him to state who are in this organization, and what gentlemen are present who represent that organization?

Mr. VREELAND. The manufacture of merchandise made of gold and silver, gentlemen, you know, in this country is not distributed over our whole area. They do not make any up in my district. They make more maple sugar in my district than they do watches. [Laughter.]

Mr. ESCH. That ought to be labeled, too, perhaps. [Laughter.]

Mr. SHERMAN. That is already provided for, Mr. Esch.

Mr. VREELAND. We should provide for the proper marking of maple sugar. [Laughter.]

The manufacture of jewelry has been confined to certain centers for a good many years. The manufacture of jewelry was formerly confined to New England; and then, following the march of civilization, it came over to New York, and finally stopped by the wayside in New Jersey; and now has gone westward, and Chicago is a good manufacturing center for jewelry, and St. Louis is a good manufacturing center to a great extent. Those cities I have named are perhaps the centers where the bulk of jewelry is manufactured in this country, running up, perhaps, to hundreds of millions of dollars' worth per annum. While we do not make all these articles of jewelry in all our districts, I do not think there is a district in the United States where they do not buy these articles.

The manufacturers of New England have an association, and the manufacture of these articles there is mostly carried on in the towns of Providence, R. I., and Attleboro and North Attleboro, Mass. There they have a jewelers' association, which they call the New England Manufacturing Jewelers and Silversmiths' Association (Incorporated). Those gentlemen are represented here to-day—that association.

The New York manufacturing jewelers have an association, and they also are represented here to-day. The New Jersey jewelers have an association likewise, and they are represented here to-day. I do not know that any gentleman from Chicago manufacturing jewelry is represented here, but Mr. Crawford, who is attorney for these organizations in

the East, will present to the committee the names and requests, I think, of about all the manufacturing jewelers in the city of Chicago in favor of this bill, so that I think the statement is warranted that I made to the committee that this bill represents the substantial agreement of the manufacturing jewelers in this country in favor of better protection for themselves and for the public.

Mr. BURKE. Mr. Vreeland, will you state briefly what happens now by reason of not having the law which you are advocating?

Mr. VREELAND. I will be very glad to come to that in a moment. I wish first, however, to speak to the committee of the other side of it. I have stated to you that while we do not manufacture jewelry in our States and districts, yet not a district or town or hamlet in the United States exists which does not have purchasers of these wares.

Mr. RUSSELL. If it will not interrupt you, I would like to ask a question. I have not read the bill. What machinery do you provide for in the bill to enforce the law?

Mr. VREELAND. There is no machinery provided for in the bill that costs the Government anything. The courts and district attorneys, upon proper complaint, shall take up these cases and prosecute them in the usual manner, the theory being that the men who are desiring the law, and who are making honest jewelry and who will be making it under this law, will not submit to having counterfeit articles presented by those who wish to cheat in the manufacture of jewelry, and that they themselves will see to it that these people are punished.

Mr. RUSSELL. In the event that the goods are in possession of some manufacturer of jewelry, supposed to be not in compliance with this law, do you make any provision for a test?

Mr. VREELAND. Yes; I will reach that presently, and if I do not I wish you would call my attention to it.

I was speaking of the side of the public, the great public of the country, which buys this multitude of articles of jewelry every year—the hundreds of million dollars' worth of it. In every district in the United States, in every town, you find these retail jewelry shops. You go into them, and find the shelves and show cases filled with articles manufactured in whole or in part from gold or silver.

The wife of some gentleman on the committee, for example, goes in at Christmas time to buy an article. She may want to buy her lord and master a fine sterling silver match box, and the jeweler tells her that this [indicating article from a collection on the table] answers that description, and she looks at it and notices that it is marked "sterling silver." That means nine hundred and twenty-five one-thousandths pure. That is the old English standard. She buys that match box, and she thinks it is almost pure silver, so good that when her husband's term in Congress expires and his salary stops she may melt up that box and get the 925 parts of pure silver from it. [Laughter.] She buys it, I say, and by and by when she comes to melt it she finds it is four hundred and twenty-five one-thousandths pure, instead of "sterling" as marked.

During the last year Mr. John Dueber, who first awakened my interest in this subject, sent to 30,000 retail jewelers—to the jewelry concerns throughout the United States—a copy of my bill along these lines and asked their opinion of it, to be sent to me. I have received somewhere between 10,000 and 14,000 letters in answer to that circular sent out to every part of the United States, and out of that 10,000

or 12,000 or 14,000 answers—I have not counted them exactly, answers to letters going into every district and State in the United States—I have received not to exceed six letters that were not strongly in favor of this legislation, and those six that did not openly accept it accepted it with some suggestions which they wished to offer and have added to the bill; so that I think I am justified in saying to the committee that the bill which we present here to-day has been the subject of sufficient consideration, so that to-day the manufacturing jewelers of the United States who make these goods stand here behind it and in favor of it.

The retail dealers of the United States who sell these goods and have to make representations about them to their customers also stand here in favor of it; and it goes without saying that every man who goes into a jewelry store and desires to pay his money and buy something of value, of gold or silver, is certainly entitled to tell if he gets what is represented to him or not.

MR. BURKE. Is the manufacturer belonging to the class that sells the match boxes you described a moment ago in favor of this legislation?

MR. VREELAND. I have no doubt he is.

A BYSTANDER. He is. [Laughter.]

MR. VREELAND. The most difficult of things to detect in merchandise sold to the public is an article made of gold and silver. If we go down the street and buy a suit of clothes, and it is represented to us as all wool and a yard wide, and we wear it several months and find out it is half cotton, we are likely to visit our displeasure on that tailor by not buying from him any more and telling our friends about it, and he receives his punishment in this world and perhaps more hereafter. [Laughter.] But if we go down street and buy that watch [indicating] or that locket which I hold in my hand, and the jeweler tells us that it is of gold, 14 carats fine—

MR. SHERMAN. And so stamped?

MR. VREELAND. Yes; and so stamped we have no way of telling for years and years whether that article is what it is represented to be or not, and we have paid an unjust and outrageous price for that article, assuming that there is much more gold in it than it turns out that there is.

MR. SHERMAN. What is that particular article you refer to?

MR. VREELAND. This article is 8 carats, stamped 14 carats.

MR. BURKE. We had that same question in the case of the watch legislation enacted in the last Congress—the fact that in the precious metals you have no opportunity to discover that you have been swindled for a period, maybe, of twenty-five years.

MR. SHERMAN. That simply has reference to the stamping, the United States assay.

MR. ESCH. Was this bill that you sent out to the dealers and manufacturers the identical bill we have under consideration now?

MR. VREELAND. It was not the identical bill, but a stronger bill.

MR. ESCH. As a result of all these interviews, this bill has come to us?

MR. VREELAND. Yes. Last summer I went to Providence and went through the factories there and elsewhere in New England and the East, and started out along the lines of old-country legislation. There is not a country in Europe at present which does not require the stamping of jewelry—that is, there is not a country in Europe that

has not legislation for the protection of the public against being swindled in the purchase of jewelry. I started out along the line of affirmative legislation, of requiring that every article should be actually stamped as to its value, instead of simply forbidding its being stamped otherwise than at its value.

Mr. BURKE. Will you incorporate in your remarks a synopsis of these laws of a few of the leading countries—England and France and Germany? If you have those, I would like you to do it.

Mr. VREELAND. The hall-mark system of England is well known to the public. As I say, I started out with affirmative legislation; legislation requiring that the manufacturing jeweler should stamp every article at its exact value. The difficulties along that line were numerous, and in order to determine what these difficulties were, I say, I visited the factories in the East and went through and saw the actual processes of manufacture, and I became satisfied that it would be a very difficult thing along a great many of the lines of manufacture to comply with this law; that it would be difficult for the honest manufacturer to do it, to comply with this law, without running a grave risk of the penalties provided. You will notice, if you study this law, that it is almost as good for the protection of the public as if we required the mark to be actually, affirmatively, stamped upon the article.

A lady, for example, wants to buy some sterling or coin silver spoons, when this law is effective, we will say, and when she goes into a store she will be very safe in assuming that the manufacturers who turn out honest goods, the men who mark sterling silver or coin silver on their spoons, are going to be very glad to put their mark on them under this law. We may be assured that the man who cheats, and makes them of less value than they are said to be, will not dare to put his mark on them. A lady goes into a store and asks for spoons, and she looks at them and finds they are marked "Sterling," and she knows that the man who made them does not dare to mark them "Sterling" unless they are really sterling. So she knows that the spoons are 925 one-thousandths pure.

Suppose a jeweler brings some out that are not marked at all. He could not mark them under the law without running the risk of prosecution and penalty. He shows them to her and says that they are sterling spoons. He says: "I buy these from very reputable people. I am willing to say to you that they are sterling silver." But the lady says: "That may all be true, but I prefer to have those which comply with the law and are actually marked as to what they are."

It would be the same with all kinds of goods. People would very soon learn to look for the mark, just as they do in the old countries of Europe to-day. They would soon come to know that if that mark was not upon the goods they are buying them at their peril.

Mr. BURKE. I would like to ask you if you know, as a rule, whether the articles you have described, the match safe and the locket, are sold to the purchaser on the basis of cost, of their containing or being of the fineness indicated?

Mr. VREELAND. To the retail jeweler, you mean?

Mr. BURKE. No, the consumer; the purchaser who finally buys it. Does he pay a price on the basis of its being of the value, as a rule, as represented?

Mr. VREELAND. I should say, Mr. Burke, that is a question of fact

in each transaction. You will find jewelers in the business who are all the time seeking to buy goods of those whom they consider to be reputable men, where the representations made to them, that is, to the retailers, will be sufficiently correct in their judgment, so that they will be willing to pass it on to the purchaser. But there is no guaranty all the while that the goods are what they are represented to be unless they will submit them to such a test as will ruin the goods.

During my visit to Providence I went into a factory where they make a great amount of finger rings. I discovered that the making of an ordinary finger ring was quite an intricate process. Seven hundred people were engaged in working in that factory. They told me of an order that had come in from a great department store company of this country—they did not show me the name, but they showed me sufficient to enable me to guess quite accurately where it came from—they had received a very large order from that firm for finger rings. The exact number has slipped my mind. It was either a hundred dozen or two hundred dozen, or something of that kind.

The firm told me they did not intend to fill the order for the reason that they catered to the jewelry trade, only they do not take in department-store trade. They did not seek it, and their experience had been that the two did not run well together. For that reason they were not going to fill the order. The order required them to make this one or two hundred dozen rings 10 carats fine and mark them 18 karats. I asked the gentlemen if the department-store people would be able to get the order filled and they laughed and said they did not think they would have any particular trouble in getting it filled; that any number of people would take that order and manufacture those rings and make them of 10-carat fineness and put on them the stamp of 18 carats.

I think you can go around this city and find in the stores any number of finger rings marked 18 carat or 14 carat which do not run over 8 or 10 carats.

MR. GAINES. In a case of that sort, would not a man be guilty of obtaining money under false pretenses?

MR. VREELAND. I think he would be if he intended to cheat. Perhaps the intention would come into it. The jeweler here may have bought and paid for the goods in good faith. It may run back to the manufacturer, and he may be in another State. After you get through looking it up, you might decide you had not lost enough on the finger ring to repay you for the expense and trouble of prosecuting.

MR. KENNEDY. Each individual offense in that way would be a mere misdemeanor. In our State it takes false pretense in getting money over \$30 to amount to a felony.

MR. ESCH. You do not interfere with the operation of laws in the several States to protect purchasers against imposition?

MR. VREELAND. The provision for that, Mr. Esch, is—wait a moment, I will read this section, so that you will know what it provides. It says:

SEC. 7. That all articles of merchandise to which this act applies which shall have been transported into any State, Territory, District, or possession of the United States, and shall remain therein for use, sale, or storage, shall, upon arrival in such State, Territory, District, or possession, be subject to the operation of all the laws of such State, Territory, District, or possession of the United States to the same extent and in the same manner as though such articles of merchandise had been produced in such State, Territory, District, or possession, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

Mr. BARTLETT. Why is not that all the law you need on the subject—that very section? If it is subject, as it is, whether you put it in this bill or not, to the police laws of the State with reference to cheats and swindles and frauds and things of that sort, what else do you need in the way of national legislation, except a provision subjecting them to the laws of the States, if that is the purpose of the bill?

Mr. VREELAND. I will say, Judge, that less than half of the States have any laws at all on the subject.

Mr. BARTLETT. Where do you get authority for the United States Congress to enact police laws for the States?

Mr. VREELAND. I stated at the commencement of my remarks that this law is made to apply under the interstate-commerce clause in the Constitution.

Mr. BARTLETT. You want to put it the same way as you put lottery tickets?

Mr. VREELAND. Yes.

Mr. BARTLETT. You will see that that decision was based upon the ground mainly that that was a lottery ticket. I doubt if, except in the case of whisky and lottery tickets, the court will decide anything of that sort. You know that decision—there were four or five decisions, and the courts have changed very much since then; three of the judges in the minority have gone off the bench, and three of those that dissented are on the bench now, so that it is very doubtful if you can now maintain that position.

Mr. VREELAND. We have looked at the decisions of the court along what we think are similar lines of legislation, and we are fairly well satisfied that the bill that we have prepared here will fall within the decisions of the Supreme Court. This is clearly a regulation of commerce in its best sense. The House of Representatives has just been spending some time in preparing a measure for the regulation of the instruments of commerce. This is the commerce itself. It would appear that it is a regulation which ought to receive the approval of everyone. As I have shown here, it has received the approval of the manufacturing organizations, substantially all of them, that manufacture articles from gold and silver in this country. I stated that before the judge came in, that I had sent out letters and had received in answer to my letters about 12,000 replies from the dealers in articles made from gold and silver; and I will show a very large bundle of them from the State of Georgia [laughter]—

Mr. BARTLETT. I do not doubt it—

Mr. VREELAND. Letters from men who sell these articles, and they say they think it is very desirable as providing some means for protecting them, so that they in turn can protect their customers from being defrauded in the purchase of these goods.

Mr. BARTLETT. There is no doubt about that proposition, but my position is that it is not the duty and is not in the power of Congress to pass police laws for regulating the fraudulent or illegal sale of products.

Mr. SHERMAN. This does not intend to regulate the police power.

Mr. KENNEDY. This is not intended to be a police regulation. It is intended to be a national regulation that is cumulative, in addition to the police regulations of the State.

Mr. VREELAND. I think the judge will understand that, especially in the manufacture of articles of gold and silver, it is almost indispensable that there shall be some uniformity at which manufacturers can aim: They can not very well get up a watch to meet the requirements of laws passed in a great many States, provided those laws differ.

I think the pure-food legislation that has been attempted in this body for several years has already produced a great benefit among the States along the line of uniformity in State legislation which has become quite the fashion, I believe, at present. At present only a few States of the Union have passed laws regulating in any degree articles made from gold and silver. I may read the list of all those who have passed laws concerning the stamping and marking of silverware: Connecticut, Florida, Massachusetts, Ohio, Maine, New Jersey, Rhode Island, Virginia, Arkansas, Maryland, Missouri, New York, South Carolina.

This bill provides, as I think I have explained since Judge Bartlett came in, that where the State has passed a law and made a standard itself for the manufacture of gold and silver this bill puts the article so made under the provisions of the laws of the State the moment it comes into the State.

Mr. BARTLETT. I have no objection to that. I think that is about all you can do.

Mr. VREELAND. If certain States have made no legislation upon this subject, then until they do make it their citizens are protected against being defrauded by goods sent down from Connecticut and New York and New Jersey which are below the standard.

Now, gentlemen, I have here a list of exhibits, not as large as I would like to make it, because I find that all of these things cost money when you go around to the stores to buy them. [Laughter.]

Mr. BARTLETT. Is there anything in this bill to prevent an average auctioneer from selling such things? You know that is one of the things that the regular dealers in my part of the country object to; that the auctioneer comes along with a stock of these goods and sets them out and sells them—

Mr. SHERMAN. It prevents their introduction and sale in the State where he is because it prevents the transfer from one State to another of anything that is not what it is labeled.

Mr. VREELAND. That particular auctioneer that dodges into town and sells his goods and is gone, you can not reach; but those goods are manufactured somewhere—there must be a factory somewhere to make them. The fact that such a factory is in existence is recognized, and pretty soon some of the competitors of that man who makes these spurious goods will notice that he is sending them out, and they will not want to submit any longer to such competition, and they will doubtless set the machinery of the law in motion to stop the making of them and will stop the supply from the auctioneer.

Mr. BURKE. Will this stop the manufacturer from making and selling an article that is not marked at all?

Mr. VREELAND. No.

Mr. SHERMAN. Then if anyone deliberately wants to be imposed upon, that gives him the opportunity?

Mr. VREELAND. Yes. Here are four or five articles of silver

marked "sterling," which means 925 one-thousandths pure, which really run down to 500 one-thousandths. That is, they are sold for twice what they are. Here are some gold ornaments [indicating] marked 18 carats that run even as low as 8 and 10 carats. That is a beautiful filled locket [indicating]. If a lady was buying that for a little girl and was told that it was 18 carats fine she could not determine to the contrary. That is a filled locket. It is only 14 carats fine.

I have seven or eight watch cases here [indicating] in the same condition, marked 14 carats. There is one [indicating] marked 14; there is one [indicating] marked 14. The manufacturer did not do very badly on that. Its actual fineness is 12 carats. Here [indicating] are some spoons that are marked "sterling."

Mr. SHERMAN. What are they in fact?

Mr. VREELAND. One is plated, and the other is sold for 25 cents apiece, so I do not suppose it is very fine. There are some rings [indicating] marked 14 carats, really 10.

Mr. BARTLETT. What provision in the bill now provides how to determine whether this is what—14 carats or otherwise?

Mr. VREELAND. The test of it; you mean what the test would be?

Mr. BARTLETT. Yes. Who determines it?

Mr. VREELAND. I suppose if complaint were made to the United States district attorney and the goods furnished to him he would have them assayed, either by the United States or some other agency where he could feel he could present it to the jury and the court and that they would know it was correct.

Mr. BARTLETT. And then indict the party?

Mr. VREELAND. Yes. Now, Judge, we have protected the manufacturer in that. Take, for instance, that, being a gold watch [submitting same], 14 carats. We make two tests of it. The first test is that a piece shall be cut out of that, free from any alloy or solder. We provide first that the piece shall be taken, for example, out of the middle of the case, which is free from any solder, and that that must assay within three one-thousandths of the mark that is put upon the watch. We allow them three one-thousandths leeway, because it is difficult sometimes to get an exact amount. Then we provide another test, and these tests are concurrent. We provide that the piece that is found to be free from alloy must come within 0.003. Then we provide that the whole article—everything in it tested as a whole—must come within one karat of the fineness which is marked or stamped upon it; and those two tests are made concurrent and not alternative.

Mr. BURKE. Do you believe that we have jurisdiction greater in dealing with commerce itself than with the instruments of commerce?

Mr. VREELAND. I am firmly of the opinion that if we have the right to pass laws for the regulation of the instruments of commerce, it follows that we have the right to regulate the commerce itself.

Mr. GAINES. Would you put it the other way, in the negative, that if we do not have certain rights, we would not have certain other rights?

Mr. VREELAND. Yes.

Mr. GAINES. I do not put that as a question to be answered, really. [Laughter.]

Mr. VREELAND. I think the commerce of the United States is becoming so great, the volume of business has become so enormous, and the

State laws amount to so little in carrying on this commerce that regulation in order to be at all effective must be Federal regulation. I would not be in favor, I will say to the gentleman from West Virginia, I would not favor having a commission appointed to fix the price of these articles of interstate commerce. [Laughter.] I consider this as a legitimate example of the proper regulation of commerce, throwing around it safeguards for the protection of the public; but, as I said to my friend from West Virginia just now, if I should propose in this law to appoint a commission, not only to see that these articles are not falsely stamped, but also to determine what was a fair and reasonable price to sell them at, then, in my judgment, we would be going beyond the legitimate meaning of what I understand to be regulation. Of course, I am willing to admit that this is not exactly a parallel case with a public corporation organized under a franchise from the people.

Mr. GAINES. That is a very good answer.

Mr. ESCH. Rolled-gold plate enters largely into that business, does it not?

Mr. VREELAND. Yes. I am glad that you mentioned that. We have put a clause in here concerning gold plate, after spending a very great amount of time in determining how we could properly treat it. We did not feel like leaving gold plate out altogether, and yet it has been a difficult matter to reach what we think is a satisfactory clause in relation to it.

Mr. ESCH. What section is that?

Mr. VREELAND. That is section 4.

That in the case of articles of merchandise made in whole or in part of an inferior metal, having deposited or plated thereon or brazed or otherwise affixed thereto a plating, covering, or sheet composed of gold or silver, or of an alloy of either of said metals, and known in the market as rolled gold plate, gold plate, gold filled, silver plate, or gold or silver electroplate, or by any similar designation, so imported into the United States, or so deposited in the United States mails for transmission, or so delivered to any common carrier, or so transported or caused to be transported as specified in the first section of this act, no such article, nor any tag, card, or label attached thereto, nor any box, package, cover, or wrapper in which such article is incased or inclosed, shall be stamped, branded, engraved, or imprinted with any word or mark usually employed to indicate the fineness of gold, unless such word or mark be accompanied by other words plainly indicating that such article or part thereof is made of rolled gold plate, gold plate, or gold electroplate, or is gold filled, as the case may be, and no such article, nor any tag, card, or label attached thereto, nor any box, package, cover, or wrapper in which such article is incased or inclosed, shall be stamped, branded, engraved, or imprinted with the word "sterling" or the word "coin," either alone or in conjunction with other words or marks.

Mr. BARTLETT. Now, I want to call your attention to the language that Chief Justice Fuller used in 155 U. S., page 481, concurred in by Justice Field and Justice Brewer:

In the language of Knowlton, J., in the dissenting opinion below, "I am not prepared to hold that no cloth whose fabric is so carded and spun and woven and finished as to give it the appearance of being wholly wool, when in fact it is in part cotton, can be a subject of commercial transactions, or that no jewelry which is not gold, but is made to resemble gold, and no imitations of precious stones, however desirable they may be considered by those who wish to wear them, shall be deemed articles of merchandise in regard to which Congress may make commercial regulations."

Mr. VREELAND. There is a section provided for plated goods and gold-filled goods. This bill provides in the case of a gold-filled watch that the manufacturing jeweler may put upon that watch the fineness of that gold plate, but it must be followed by other words clearly indi-

cating that it is plate, or gold filled, as the case may be. For example, if that is a gold-filled watch [exhibiting article], and the plate is 14 carats fine, the manufacturer would have the right to put on there "14 K," but he must follow that by the word "filled"—

Mr. ESCH. Or "plated," or "electroplated?"

Mr. VREELAND. Yes, as the case may be, so that the purchaser is put on his guard, and is given the information that it is not 14 carats of gold and alloy, but filled or plated, as the case may be.

We think that that clearly protects the public, and at the same time it enables the manufacturer of a high class of plated goods to make them in such a way as to indicate their character without deceiving the public.

Mr. ESCH. You believe your bill contemplates that every article shall have stamped thereon its fineness; is that possible?

Mr. VREELAND. No; it does not contemplate that at all. You are not obliged to stamp these goods, but if you do stamp them you must stamp them accurately and correctly.

Mr. ESCH. If you do stamp it, it must be on the article?

Mr. VREELAND. Yes.

Mr. ESCH. Is it allowable to put on tags?

Mr. VREELAND. No; it forbids it to be put on tags or boxes or anything accompanying it.

Mr. ESCH. Is it possible to put a mark on a tag and not on the article itself, so that there could be a separation of the article and the tag in order not to give the information?

Mr. VREELAND. The bill provides—

No such article, nor any tag, card, or label attached thereto, nor any box, package, cover, or wrapper in which such article is incased or inclosed, shall be stamped, branded, engraved, or imprinted with any word or mark usually employed to indicate the fineness of gold, unless such word or mark be accompanied by other words plainly indicating that such article or part thereof is made of rolled gold plate, gold plate, or gold electroplate, or is gold filled, as the case may be, and no such article, nor any tag, card, or label attached thereto, nor any box, package, cover, or wrapper in which such article is incased or inclosed, shall be stamped, branded, engraved, or imprinted with the word "sterling" or the word "coin," either alone or in conjunction with other words or marks.

Mr. BARTLETT. A man might be perfectly willing to buy a filled watch, but he would not want a tag to be on it when he wore it. [Laughter.] A good many people, unable to wear diamonds, do wear rhinestones—"Hot Springs diamonds"—but they like very much to have the world with whom they come in contact believe that they are real diamonds, not to fool anybody as far as selling them is concerned, or anything like that.

Mr. SHERMAN. When they buy a solitaire they want it a warranted solitaire, yes. [Laughter.]

Mr. VREELAND. Gentlemen, there are one or two amendments that I desire to add to the bill. One is to amend section 3, which makes the same test upon articles of silver as is applied to the preceding section with reference to articles of gold. Another is, that I desire to change the time at which the act shall take effect to one year after its passage instead of six months after.

I find the manufacturers are now looking forward to the next holiday season and getting ready for it. In the case of a great many articles the Christmas season is the only time of year when they sell these goods.

Mr. SHERMAN. In other words, you want to let them unload once more on the public? [Laughter.]

Mr. BARTLETT. He wants to help them sell cheap Christmas goods.

Mr. VREELAND. That may be one of the results, but we want to treat the manufacturers fairly in putting the new law into effect. And reputable manufacturers tell me they would be satisfied to make it on next January, but they want it to go by the next holiday season.

Mr. SHERMAN. I am against such a proposition. A man knowingly stamping an article falsely ought to suffer, and it would be a good start to impose a penalty, as a lesson, on the stock he has got; and I, for one, am not in favor of passing another holiday season and allowing the manufacturers to deceive the public for another Christmas. I may want to buy jewelry myself next winter. [Laughter.]

Mr. VREELAND. Some of the gentlemen representing the New England Association can tell the gentlemen their reasons much better than I can why this is desired. Of course I have no technical knowledge on the subject. I think that is all the time I will take up, gentlemen. I thank you.

Mr. BURKE. Suppose a piece of jewelry was marked "14 K" and only contains 10 carats? Could they re-mark it and re-tag it so as not to be liable to the law? Suppose an article is already manufactured and on hand. What you suggest is that the law should take effect at some future date, so that they could work off this manufactured product. Would they be violating the law if they could sell this for something different from what it actually is?

Mr. KENNEDY. Could they not take the marks off and mark the goods afresh without much expense?

Mr. VREELAND. I think we will let the manufacturers themselves tell about that, because they have superior knowledge. My theory was that they needed as much time as that to make changes in their shops to prepare them for the new law, rather than to unload goods already on hand.

Mr. ESCH. This bill prohibits transportation of spurious articles and prevents importation of spurious articles. Do you not think it would be wise to prevent exportation also? I remember in your argument about the watch cases it was stated we exported spurious watch cases to foreign countries, and that these discredited our trade. Why is there not a similar reason in this case?

Mr. GAINES. All the foreign countries protect themselves pretty well.

Mr. ESCH. How about South America?

Mr. VREELAND. I do not know to what extent they are protecting themselves in South America by laws, but I should be entirely in favor, personally, of having a section added to the bill providing that we should not unload upon other countries any false or spurious goods. I think it would be a benefit to the manufacturers of this country to take that course.

Mr. BARTLETT. I understand the missionaries get that kind of jewelry in foreign countries.

Mr. GAINES. So far as I am concerned, I see the desirability of having an American hall-mark. My only difficulty is whether we have the power to enact such a law as this under the Constitution. It strikes me that if it can be shown that the frauds have been practiced to such an extent as to interfere with American commerce abroad that

that would perhaps bring the matter within our jurisdiction; that is to say, it would be a regulation and law protecting not merely the public morals but the removal of something which is a restriction on American commerce if the bill is so framed as to remove something that is deleterious to American trade abroad and prevents commerce between this country and other countries.

Mr. VREELAND. Yes.

Mr. ESCH. In the pure-food bill we have a provision that the food articles are all right if they conform to the laws of the country to which they are shipped.

Mr. GAINES. Yes. I am trying to get it in my mind, so that I can vote favorably.

Mr. SHERMAN. Have you any other speakers, Mr. Vreeland?

Mr. VREELAND. Yes; Mr. Crawford.

STATEMENT OF MR. FRANK L. CRAWFORD, OF NEW YORK CITY, REPRESENTING THE JEWELERS AND SILVERSMITHS OF NEW YORK AND NEWARK, N. J.

Mr. CRAWFORD. Mr. Chairman and gentlemen, I have the honor to represent the jewelers of New York and Newark, and I think I may say, to-day, at least, that I speak for the jewelers of Attleboro, Mass., and of Providence, R. I.

I wish to emphasize the character of this delegation, how it is made up and what it represents, because, waiving the constitutional point, one of the very strongest arguments, I think, in favor of this bill is the support it has from the trade, as shown by the persons of these gentlemen and by the petitions and resolutions which, with your permission, I will file.

The four great centers for the manufacture of jewelry and silverware in the country are New York City, Newark, N. J., Attleboro, Mass., and Providence, R. I. I think it is safe to say that 80 per cent of the gold and silver jewelry manufactured in this country is manufactured at those places collectively.

They are represented in the trade by three powerful trade organizations. Those are the New England Manufacturing Jewelers and Silversmiths' Association, which includes both Attleboro and Providence, and which is represented here to-day by Mr. Copeland, its president, and Mr. Thresher, also of Providence, and M. G. K. Webster, silversmith, from Attleboro.

In New York there is a New York Jewelers' Board of Trade, a large and influential organization. That is represented here by Mr. Frederick H. Larter, president, of the firm of Frank A. Larter & Co., and there is also a person here, Mr. H. A. Bliss, of the Gorham Manufacturing Company, and Mr. George E. Fahyse, president of the Brooklyn Watch Case Company, one of the largest manufacturers of gold watch cases, both for domestic and export use. There is also here Mr. Samuel Clark, of Newark, who represents the Newark Manufacturing Jewelers' Association, which also is a large and powerful organization.

Now from all those four centers we have petitions and formal resolutions which, with your permission, I will file.

I also have a petition bearing the names of a very large number of prominent Chicago manufacturers and wholesale jewelers. I think I

may also say that, although I do not in any way represent them, the Dueber-Hampton Watch Case Company, in Ohio, is supporting the bill. Mr. Sackett, representing that company, whom I hoped to see here to-day, has appeared and conferred with Mr. Vreeland concerning the bill.

Mr. BARTLETT. All reputable manufacturers would put their names on the articles. The Gorham Manufacturing Company, for instance, whom you have mentioned—I have had some dealings with them, and our people down our way have had dealings with them. I pick that firm out as an illustration. Their reputation or character is such that a man buying goods manufactured by them has reason to believe, and does believe, and properly so, that he gets what he buys. Now, if a man puts a label upon the goods manufactured by Gorham when they are not so manufactured, and sells them to me, he is a cheat and a swindle, and I can indict him in any State of the Union for deceiving me.

Mr. CRAWFORD. If I may very briefly tell my experience as to legislation of this character, I think I can answer a number of the objections that have been brought up here. I had charge of the gold legislation which was passed in 1905 in the legislature of New York. That legislation was before the legislature for two sessions. I had the honor to draw the original bill and amended it from time to time. I appeared at six or seven public hearings before both houses of that legislature. The subject was most thoroughly thrashed out, and finally a law was passed. In preparation for that, when I first took the matter up I said, as the judge said here, "Why should we not reach these people through the statute of false pretenses?" I found that the attempt had been made and that this difficulty was always met with.

These articles are not sold with oral representations. As in the example of the sale of a watch case of 14 carats, you may not be able to prove that the dealer said "14 carats." The purchaser looks at it and sees "14 carats" marked on it. I submitted that watch case to Mr. Lebkuecher, of Kremenz & Co., of Newark, and I asked him if there is any way he could determine without an assay that it was not 14 carats. He said: "No; it might be worn fifty years without detecting the difference."

That was the view taken by the lower courts in the State of New York, and in consequence of that we went to the legislature to get legislation declaring a false marking to be a misdemeanor.

Now in the hearings before the houses of the New York legislature we were met constantly with this argument:

Why do you not get Federal legislation? Why do you seek to put the manufacturers and jewelers of New York at a disadvantage with those of other States, because New York City does not manufacture or sell jewelry to be consumed in New York City to any appreciable extent. On the contrary, it sells to the entire country. If there is some other State, say the State of Maine, where there is no gold legislation, but where there might be located gold manufacturers, they would be at perfect liberty to make illegitimate gold jewelry any number of carats below the standard and sell it in Indiana, and they would thereby be just that much better off, as compared with the New York manufacturer, in being able to fix a low price. Why do you seek to put the New York manufacturer at a disadvantage with the other States. Go and get Federal legislation, and go right through the Union and have every State reenact this law, and the two branches of legislation would supplement each other and form a perfect system.

Mr. BARTLETT. What use would you have of State legislation if you could get this Federal legislation?

Mr. CRAWFORD. The use of it, Judge, is this, that Congress is limited, as you know much better than I—limited in its jurisdiction to interstate commerce. We have only sought in this bill to cover goods from the time they are delivered to the carrier or deposited in the post-office until the time they reach their destination. That moment they pass out of interstate commerce, at least so far as this bill is concerned, and I think by law, and they come under the action of State laws, if there be such. If the United States were all one country, without any complex system of States or national laws playing into one another, you could pass one statute for the whole.

Mr. BARTLETT. I believe your bill wipes out all difference.

Mr. CRAWFORD. It is on that account, largely, so far as the gentlemen I represent are concerned, that this effort has been made to get this bill passed. Of course, there is not time for me to discuss the constitutional point, and perhaps I would be taking a great deal upon myself to undertake to discuss it, considering the number of able lawyers on this committee who have the question constantly before them.

Mr. STEVENS. I would like to ask you a question, on page 7, section 7, lines 21 and 22 particularly. The language of that section reads—

Sec. 7. That all articles of merchandise to which this Act applies which shall have been transported into any State, Territory, District, or possession of the United States, and shall remain therein for use, sale, or storage, shall, upon arrival in such State, Territory, District, or possession, be subject to the operation of all the laws of such State, Territory, District, or possession of the United States to the same extent and in the same manner as though such articles of merchandise had been produced in such State, Territory, District, or possession, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

Do you intend there to try to subject these articles to the operation of the State laws immediately upon their getting within the borders of the State, or upon arriving at the destination?

Mr. CRAWFORD. That language is an exact reproduction of the original-package liquor law, as I understand.

Mr. STEVENS. That is the language of the Wilson Act.

Mr. CRAWFORD. Yes; that is the language of the Wilson Act, and it has been construed by the Supreme Court of the United States.

Mr. BARTLETT. I do not think the word "possession" is in the Wilson Act.

Mr. STEVENS. That is what I was wondering about. I think the Wilson Act was passed before we had any outlying possessions.

Mr. CRAWFORD. Now I have a number of trinkets here, some of those that Mr. Vreeland has spoken of. There are a number of gentlemen here whose names I have given you, and I would be glad to have you hear them, if you can, for a moment.

Mr. BURKE. Do you know whether the articles of jewelry described are sold to the consumer on the theory that they contain or possess the fineness as marked, or whether they are ordinarily sold at the price of what their actual value is?

Mr. CRAWFORD. I presume that differs in different cases. Of the four articles I have here [indicating] I know one was sold with the statement that it was 14 carats. Another was sold without any statement—

Mr. BURKE. I mean by the retailer, not the manufacturer.

Mr. CRAWFORD. I understand one was sold with a statement that it was 14 carats. Two were sold without any statement, and the fourth, I think, upon questioning the dealer, was said to be about 12 carats.

But I am very glad you have raised that point, because here is the distinction, as I see it. Of course the man who goes to the manufacturer and buys is probably never deceived. He is very likely even to ask to have his goods so stamped. But the manufacturer is putting into the hands of the ultimate dealer an instrument of fraud.

Mr. BURKE. That is the point I was trying to bring out.

Mr. CRAWFORD. He is putting into the hands of the retailer an instrument of fraud, whereby he may deceive the ignorant and the unwary. I know in some cases he does deceive them. He does not necessarily say, "This is 14 carat," or, indeed, say anything about it. The meaning of the "14 K" or carat mark is fairly well known, even among the ignorant foreign population.

The first thing that brought my attention to this matter was some proceedings brought by the Legal Aid Society of New York in a case of some foreigners—I think they were Polish Jews—in New York. The first thing they do is to buy jewelry when they have saved a little money, and these people had bought from peddlers and others in the East Side of New York as 14 K jewelry something that was spurious, and as we say in cant phrase, "rotten."

Mr. BARTLETT. Will not everyone, even people who are pretty ignorant, know that the 14-K watch, or the 14-carat gold ornament, whatever it may be, or chain, or sterling silver piece, or silverware, ought not to be honestly or legitimately sold at the low prices at which some of these things are sold, and the minute it is sold it is suggested, "Here is a 14-K watch that I will sell you at a very low price," it occurs to them at once that it is no good?

Mr. CRAWFORD. Unfortunately in our Northern States we have great masses of people who are not so intelligent as the people of the State of Georgia [laughter], and they do not have that knowledge. Furthermore, these goods are sold oftentimes at a full price.

I wanted to say also that these gentlemen here, whom I represent, prefer that the extreme penalty of the bill shall be made \$500 fine or three months' imprisonment, rather than \$1,000 fine and six months' imprisonment.

Mr. ESCH. What are your views with reference to extending the operations of this act to exportations?

Mr. CRAWFORD. I see no objection, personally. That was left out in the interest of simplicity and because it was thought not to be an important matter.

Mr. BURKE. Are you the gentleman to explain why the operation of the law was to be put off to some future date?

Mr. CRAWFORD. No; Mr. Thresher, of Providence, R. I., can speak to you on that subject.

STATEMENT OF MR. H. J. THRESHER, OF PROVIDENCE, R. I.

Mr. THRESHER. Mr. Chairman and gentlemen of the committee, perhaps I ought to touch first on the question of when this bill is to become operative. The chairman has suggested very politely how he

feels about it, and we as manufacturers in New England have very decided opinions about it also. We do not feel, Mr. Chairman and gentlemen, that we are a set of men who need watching very closely. We do not feel that we are extremely guilty of acts imputed to us. As a rule the New England manufacturers are honest and well-meaning people, and these goods that are illustrated here are perhaps exceptions to the rule. Such goods do exist, however, and we have no excuse to offer for them.

The jewelry business started in the East in Providence and Attleboro, Mass., and for generations they have made goods there that would not assay under this proposed law. They would not stand the test of a half-carat. Perhaps a 14-carat article would be found to be 13-carat. We have got to this point now, where to-day we have but one season, really, the holiday trade. If the holidays are over our manufacturers commence to manufacture goods for the next season, and pack them away for the holiday season next following. Those goods are being made now. They have been made now for two months past. The man who makes them knows exactly what he made them of. The man who buys them knows exactly what he is buying, so that the price is established, not on the value of 14-carat gold, but on the value of that particular article, and that man is in competition with his neighbors, who are making practically the same quality, so that the effect of the legislation in New York State, that went into effect on January the 1st, of this year, has already been to make our manufacturers raise the price of their goods. Certain classes have already done that.

That is one reason why, gentlemen, we come before you, and if you will be kind enough to leave the practical part of this thing to the manufacturers, who have given nine months' thought to this thing, we shall be glad. This bill, as prepared by Mr. Vreeland, is a practical bill. It may have apparent inconsistencies in it, but we can not make them different. We do not want to commit fraud, but there are unavoidable divergencies there.

MR. VREELAND. You mean the variation permitted of the half karat?

MR. THRESHER. Yes; on the finished article. Now, New York State has a law, a gold law, conducted as a gold law. Pennsylvania has a gold law, and—

MR. CRAWFORD. And Illinois also.

MR. THRESHER. Yes; we, the manufacturers of New England, sell our goods in New England. Providence is the biggest city in the State of Rhode Island and Rhode Island is a manufacturing State and the jewelry industry is the biggest single industry that we have; but we do not sell 1 per cent of our product in Rhode Island, but do sell it elsewhere in New England and in the States of the West, Northwest, and South. It would be impossible to comply with the laws of all the different States and therefore we come now for national legislation, leaving to you the question of the constitutionality of this bill. We ask you to leave to us the practical part of that bill as practical men.

MR. SHERMAN. Do you not mean this: That you have made all your preparations to deceive the consumers for one more year, and because you have made these preparations you want to be left alone and be allowed to deceive the public one more harvest time before you are

compelled to stop putting out your goods for something different from what they really are? Is not that what you have substantially said? You have stamped them; the retailer who has bought them of you will know what is in them, but the consumer will not know, because they are stamped falsely.

Mr. THRESHER. That is true to a certain extent, but, as I stated to the committee before, these extreme cases that have been illustrated here are exceptions and not the general rule, and the rule is that they come very near to the highest class, as Mr. Vreeland's bill provides one-half carat.

Mr. BARTLETT. What law of any State could you contravene if you stamped upon it what it really was? If it was 10 carats and you put on 10 carats, or if it were 12 carats and you put on 12, or if it were 14 and you put on 14? If you put that on what law of any State in reference to preventing the deception or fraud practiced upon the public would you violate if you put on it nothing but what it really was?

Mr. THRESHER. I do not know, Judge, that we would violate any State law. The only thing is that we can not make these articles of jewelry and stamp them one at a time. We must put through, as we call it, large batches of them at once, and we can not put through one batch stamped in accordance with New York law and another batch in accordance with another State law, and still another batch in accordance with the law of still another State without inconvenience, especially as the State laws are being multiplied. We ask for national legislation, which would, of course, be uniform.

Mr. BARTLETT. You do not understand my question. What I ask is, If in the manufacture of your goods you simply stamp it what it was, there is no law, and no State would pass a law, making it a cheat and swindle for you to sell a man a 10-carat watch for 10 carats. I suppose the law would be to prohibit you from selling a 10-karat watch for a 14-carat watch. If you stamped on it what it really was you could not come in conflict with any legislation or constitutional law of any State.

Mr. THRESHER. Possibly that may be true. I want to say what I repeated a little while ago, that owing to the customs of several generations there, without any stamping laws of State or nation, we have drifted into a habit which the chairman thinks is dishonest, a habit which has—

Mr. SHERMAN. Do you not consider it dishonest? Else why do you ask for this legislation?

Mr. THRESHER. We do not consider it dishonest, because the manufacturers there have sold those articles for exactly what they are.

Mr. SHERMAN. But you have stamped them for what they are not.

Mr. THRESHER. You are providing for a new standard, for a degree of perfection that we never had before.

Mr. BURKE. You stated that these cases that had been cited have been the exception. Now, will you state what the rule is?

Mr. THRESHER. I am not a case manufacturer, but on jewelry I would say that the goods would vary as a rule. Some manufacturers—we, for instance—personally, I know, nine or ten years ago, labeled our stock and put on a tag, indicating that it was right up to the mark. That was contrary to the established custom. The jewelry men had

been varying, I should say, a full carat heretofore, which would not comply with the provisions of the proposed law. We are all anxious for the proposed law, because it will be uniform.

Mr. BARTLETT. Do you think if this Congress should set up a standard and New York State had another standard, differing from the one the United States Congress set up—do you not think, under the law, if you sold goods in New York in accordance with what was prescribed by the State of New York that that would prevail over the standard provided by Congress?

Mr. SHERMAN. Mr. Thresher, we are obliged to conclude these hearings now, because we have to give a hearing to a bill that Judge Davey desires to have reported. If you desire to have a further hearing, Mr. Vreeland, we can meet again at 2 o'clock this afternoon.

Mr. VREELAND. I do not think that we have anything further to add. These gentlemen came here mainly to put their presence behind this bill. That is all. Mr. Chairman and gentlemen, we thank you.

Thereupon, at 12 o'clock noon, the hearing was concluded, and the committee proceeded to the transaction of other business.

In the matter of House bill 14604, introduced by Mr. Vreeland and entitled "A bill forbidding the importation and carriage in interstate commerce of falsely or spuriously stamped articles of merchandise made of gold or silver or their alloys, and for other purposes."

First. This bill is designed to prevent the importation and carriage in interstate commerce of articles composed wholly or partly of gold or silver, or of an alloy of either, whether solid or plated, which bear any mark indicating that the gold or silver or alloy in such article is of a greater degree of fineness than is the fact, according to the standards and subject to the qualifications set forth in the bill. The evil intended to be remedied has been in the past very widespread as to silver articles and is still very widespread as to gold articles. The exhibits submitted to the committee show more forcibly than words how extreme is the deception which may be practiced by the false marking complained of, and how impossible it is for a purchaser to detect the falsity of the marking. Even for a dealer this is in many cases impossible except upon an assay, which would destroy the article.

Until about ten years ago, large quantities of silver goods, marked and sold as "Sterling" or "Coin," assayed very much below the standards indicated by those words. By the efforts of prominent silver manufacturers and others, laws were passed in a number of the States prohibiting the sale of silverware so spuriously marked, the result of which has been to shut the spurious silverware out of the larger commercial States of the Union, though there are still many States in which there is no protection.

So far as goldware is concerned there had been prior to 1895, acts passed in three of the States prohibiting the false marking of goldware, but these laws have not been enforced. In 1905 the legislature of the State of New York passed a law designed to prevent the evil in question. This law went into effect January 1, 1906, and has already had a great effect in securing the correct marking of goldware, though there is still a considerable amount of spuriously marked gold articles on sale in that State. It is believed, however, that the active enforcement of the New York law will result in largely shutting out spuriously marked goldware from that State.

The object of the present bill is, as far as possible, to shut spuriously marked goldware and silverware out of all the markets of the United States, so far as may be accomplished within the bounds of interstate and foreign commerce.

Second. The leading countries of Europe have long had laws prohibiting the false marking of gold and silver articles. In some of the countries the marking of the quality of the articles is compulsory.

1. In Switzerland articles must be marked either in carats or in thousandths fine. Errors are permitted of three one-thousandths for gold and five one-thousandths for silver.

2. In France the marking is compulsory and no margin of error is allowed.

3. In Germany the marking is voluntary, but if employed, must be accurate within five one-thousandths for gold and eight one-thousandths for silver.

4. In England the marking is compulsory and is done by a Government official and no error is permitted.

5. In Austria-Hungary the fineness of the article must be marked in thousandths. No error is permitted.

In all of these countries the laws are penal in character.

Third. Legislation of this general character has also been passed in a large number of States as to the false marking of silver and in a few of the States as to the false marking of gold. In all instances the legislation has been penal in character. Thus:

SILVER.

Connecticut: General laws of 1902, sections 1382-1384.

New York: Penal Code, section 364a-364h.

Massachusetts: Revenue Laws 1902, volume 2, page 1758, section 65.

Ohio: Laws of 1896, page 54.

New Hampshire: Public Statutes 1901, page 397.

Michigan: Compiled Laws 1897, volume 2, page 1725, sections 5468-5469.

Maine: Statutes 1895, Freeman's Supplement, page 235.

Maryland: Laws 1900, page 677; Code of Public Laws, article 27, sections 119C to 119K.

Missouri: Laws of 1895, page 158.

Illinois: Criminal Code, sections 529-530.

GOLD.

Connecticut: General Laws of 1902, sections 1380-1381.

Pennsylvania: Laws of Pennsylvania, 1897, page 163.

New York: Laws of 1905, chapter 287, page 547.

Illinois: Criminal Code, section 528.

In all these laws the standard of silver is nine hundred and twenty-five one-thousandths fine for "Sterling," and nine hundred one-thousandths fine for "Coin."

No specific error is permitted.

In the gold statutes of Connecticut, Illinois, and Pennsylvania, no margin of error is permitted. The act of New York relating to gold permits an error of one carat, but the language is such that under it the entire article may be assayed as one piece. Copies of the State statutes referred to are filed herewith.

Fourth. This bill now comes before Congress with the very general support of the trade, including manufacturers and wholesale and retail dealers. An immense number of letters from retail dealers, favorable to a bill of this general character, have been received by Mr. Vreeland. Manufacturers of New York City, Newark, N. J., Providence, R. I., and Attleboro, Mass., and also many other important concerns in Chicago and other parts of the West have approved the bill in its essential features.

Petitions and letters from a large number of manufacturers and wholesale dealers in various localities, and also copies of resolutions passed by the New England Manufacturing Jewelers and Silversmiths' Association and by the Manufacturing Jewelers' Association of Newark, N. J., all in support of the bill, are filed herewith. These petitions bear the names of the most important watch and watch-case companies, as well as of the most important manufacturers of silverware and gold jewelry of every description. The various localities enumerated which directly or by representatives are supporting the bill, are the seats of almost all the important manufactures of gold and silver articles in the United States.

That the bill is for the protection of the public needs no argument.

Fifth. The bill is reasonable in its provisions and provides ample protection against mistake, accident, or malice of competitors. The bill does not compel any articles to be marked, but requires that, if marked, they shall be truthfully marked according to certain standards and within certain margins of error. Articles of gold are permitted a margin of error of one-half a karat where the portions assayed are free from solder or alloy of inferior fineness used to unite the component parts of the article. If all the gold and its alloys, including all solder, in the entire article, are assayed together, the actual fineness must come within one karat of the marking.

(It should be remarked in passing that in gold manufactures solder means always an alloy of inferior fineness—for example, articles of 14-carat gold may be soldered with a gold alloy of 8 carats fine. The reason for this is obvious. A substance to be effective as solder must melt at a lower heat than the component parts of the article, and this requirement is met in a low alloy of gold, since the higher the fineness of gold, the greater its resistance to heat.)

An exception to the general standards for gold articles is made in relation to gold watch cases, in which an error of only three one-thousandths is permitted. This paragraph of the bill was framed at the wish of a large number of the most prominent watch-case manufacturers in the country. The reason for the distinction is that gold watch cases are now largely exported and have to be sold in competition with watch cases of foreign manufacture and subject to laws which, as shown by paragraph second of this brief, either permit no error or a very small error. The specific error of three one-thousandths contained in this bill is the error permitted under the Swiss laws for articles of gold manufacture.

Sixth. The standard of fineness for silverware is the same as that prescribed by the various State statutes above referred to, except that an error of four one-thousandths is permitted where the assay is made of a part of the article free from solder.

An amendment to the bill, which is accepted by all those supporting the bill, also requires that the entire quantity of silver and its alloy, including solder, shall assay within ten one-thousandths. These margins of error correspond roughly to those of Switzerland and Germany and have been approved by most of the large manufacturers of silverware in the United States.

Section 4 of the bill requires all articles of gold plate to be so marked, if they bear the ordinary marks of fineness, and prohibits the use of the word "sterling" or "coin" upon anything but solid silver. In all reputable silver manufacture at the present time, the words "sterling" and "coin" are so confined, and such has been their use from time immemorial in England.

Seventh. So far as the form is concerned the bill has been drawn closely upon the lines of the lotteries act. (Act of March 2, 1895, chap. 191, U. S. Comp. Stat., p. 3178.)

This law was held by the United States Supreme Court to be constitutional. (Lottery case, 188 U. S., 321.)

A number of very similar acts have been passed by Congress and are now in force. Thus:

Obscene books, act of February 8, 1897, chapter 172 United States Compiled Statutes, page 3180.

Game birds or animals killed out of season, act of May 25, 1900, chapter 553, section 3, United States Compiled Statutes, page 3181.

Diseased carcasses of cattle, etc., or food products thereof, act of March 3, 1891, chapter 551, section 5, United States Compiled Statutes, page 3191.

There are also various other acts prohibiting the importation of articles deleterious to the public health.

Eighth. That regulation of interstate and foreign commerce may assume the form of prohibition is well settled. (Lottery case, 188 U. S., 321, p. 358-360.)

F. L. CRAWFORD,

Attorney for jewelers of New York and Newark, N. J.

THE MANUFACTURING JEWELERS' ASSOCIATION OF NEWARK, N. J.,

Newark, N. J., March 7, 1906.

Whereas the manufacturers of gold and silver jewelry, watch cases, silverware, and all articles made of the precious metals, located in Providence, R. I., and the Attleboro, Mass., in New York City, and in Newark, N. J., have practically united upon the terms of a bill regulating the stamping of quality upon all such articles, and

Whereas said terms are embodied in bill No. 14604, introduced into the House of Representatives on February 12, 1906, by Mr. Vreeland, and such amendments as have been made therein, and

Whereas said bill No. 14604 as amended is now before the Interstate and Foreign Commerce Committee of the House of Representatives: Therefore I *it*

Resolved, That we, the members of the Manufacturing Jewelers' Association of Newark, N. J., do hereby heartily approve of and indorse said bill, and most respectfully urge upon the honorable the members of the Interstate Commerce Committee that they report said bill favorably to the House of Representatives as speedily as they may be able to do so, and that they use their utmost endeavors to secure its passage and its final enactment into law, that the public may be saved from imposition and honest manufacturers of the precious metals be protected from unfair or dishonest competition; and be it further

Resolved, That a copy of these resolutions, signed by the president and secretary, be presented to the Interstate Commerce Committee at the public hearing on said bill, to be held on Friday, March 9, 1906.

GEORGE R. HOWE, *President.*

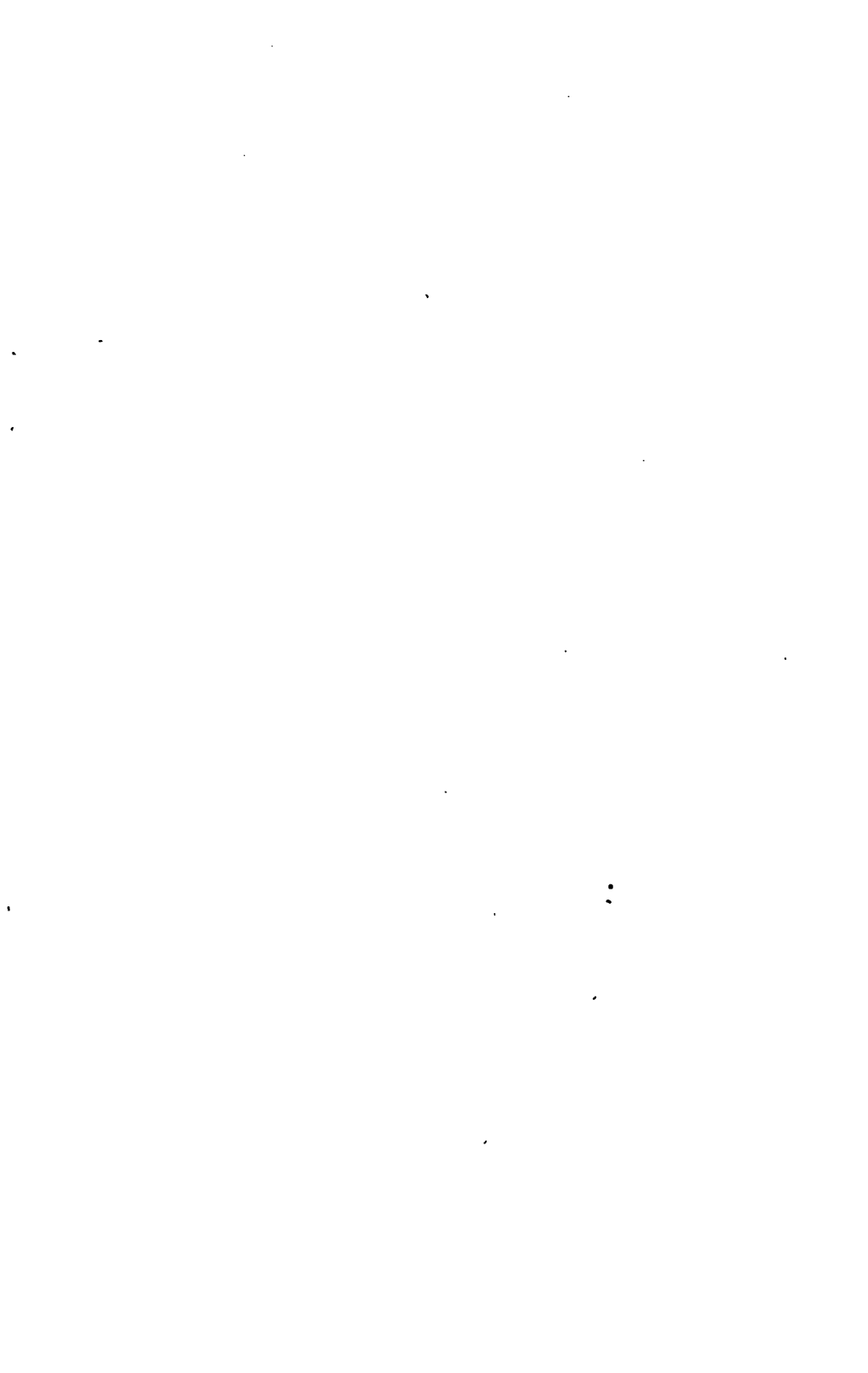
HARRY DURAND, *Secretary.*

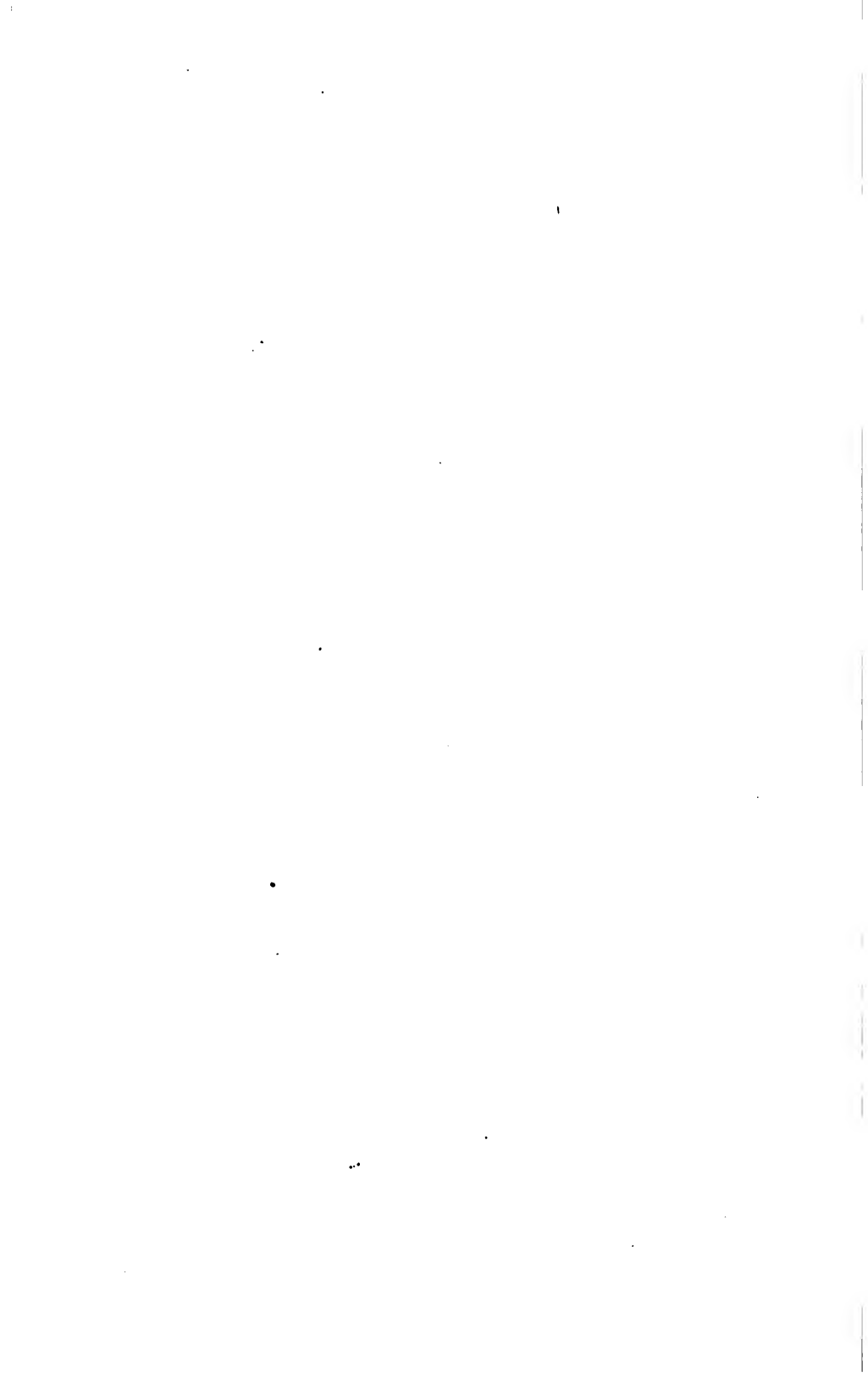
To the Interstate Commerce Committee of the House of Representatives:

We, the undersigned, manufacturers of gold or silver jewelry, goldware or silverware, believing that the bill introduced by Mr. Vreeland and entitled "A bill forbidding the importation and carriage in interstate commerce of falsely or spuriously stamped articles of merchandise made of gold or silver or their alloys, and for other purposes," is for the best interests of all the branches of the trade as well as the public, hereby express our approval of the said bill (except that we think that the maximum penalty should be reduced to a fine of \$500 or three months' imprisonment), and we respectfully petition that the said bill, with that change, be favorably reported and passed.

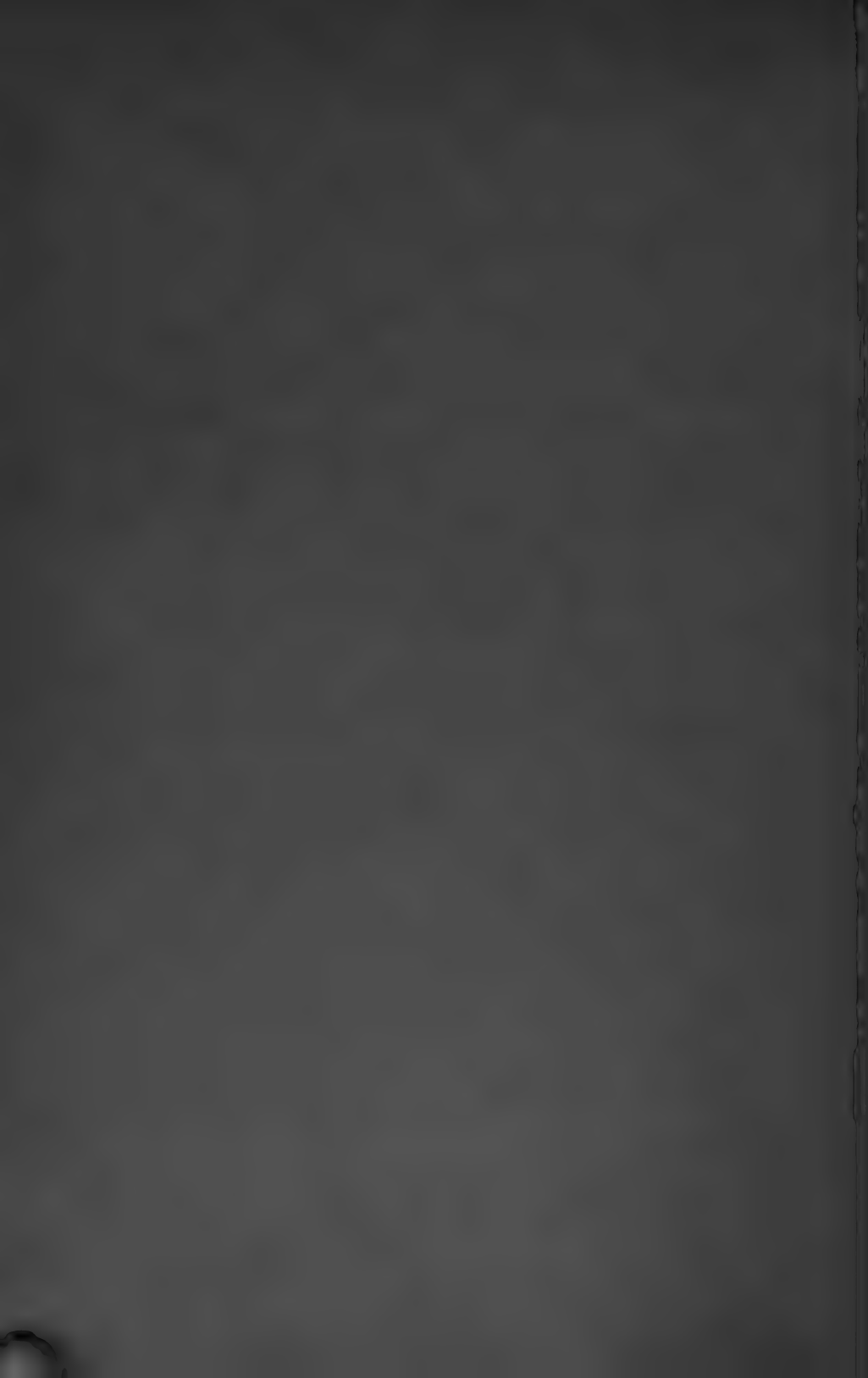
Name.	Business address.	Character of business.
Carter, Howe & Co	Newark, N. J	Jewelers.
Shafer & Douglas	do	Do.
Durand & Co	do	Do.
J. A. & G. W. Granbery	do	Do.
Mandeville, Canow & Crane	do	Do.
Andrew O. Kiefer	do	Do.
J. D. Dalzell & Co	do	Do.
Krementsz & Co	do	Do.
Sloane Co	do	Do.
Carrington & Co.	do	Do.
Kautzmann & Sussfeld	do	Do.
Moore & Son	do	Do.
Link & Angell	do	Do.
T. W. Adams & Co.	do	Do.
Herpus Bros.	18 Crawford street	Gold.
Eluculd & Sinnock	46 Green street	Do.
Chas. Schuetz & Sons	211-213 Mulberry street	Do.
Wm. Huger & Co	211 Mulberry street	Do.
T. Pautellar	215 Mulberry street	Do.
Crane & Theurer	13 Franklin street	Do.
Day, Clark & Co		
F. & F. Felger		
Arthur Marson (Incorporated).		
Cory Bros. Co		
David C. Dodd Co.		
Lansburg & Nelles Co		
Bippart, Griscom & Osborne		
Schappel-Schaubacher & Brod.		
L. Engel Co.		
Nesler & Co.		
Albert Abrecht		
A. Joralemon & Son		
C. Rech & Son		
L. Barnett & Co.		
Ziruth Kaiser Co.		
Courtois, Bush & Garrigus		
Pryor Novelty Co.		
Schwarzkopf & Dozer (Limited).		
Allsopp & Buob		
The Hayes Bros. Co.		
H. G. Lefort		
Wiegle & Rose		
Unger & Christl		
White-side & Blank (Incorporated), by H. Blank, treasurer.	Liberty and Lafayette streets, Newark, N. J.	14-carat jewelry.
Robt. Kollman & Co.	17 Liberty street, Newark, N. J	10 and 14 carat jewelry.
Elm Manufacturing Co., Frederick J. Meerlind.	do	10-carat jewelry.
W. H. Taylor	do	14 and 10 carat swivels etc
M. S. Utstein & Co.	93 to 101 Lafayette street	Gold rings.
Werdley, Allsopp & Bloemke Co.	Columbia and Lafayette streets.	Gold jewelry.
Frank Moorfield.		Watchcase material.
Lawrence Manufacturing Co., William E. Edwards.		Gold and silver smiths
Schmitz, Moore & Co.	18 Columbia street	
Frank Kursh & Son Co		Gold jewelry.
Allsopp & Allsopp	18 Columbia street	Do.
Burrows, Kollmar & Co	do	Do.
Richardson Manufacturing Co., E. B. Aigman, secretary.	52 Columbia street, Newark, N. J	Do.
LaPierre Manufacturing Co., T. H. LaPierre, president.		Silversmiths.
A. Rosenberg	Rubenstein Building.	Gold jewelry.
Hoyt, Obrig & Geiger Co., by John Obrig.	50 to 58 Columbia street, Newark, N. J	Do.
Norton & Tuttle.		Silversmiths.
Lackner & Co	Richardson Building	Do.
De Roy & Reiss Co.	do	Gold jewelry.

Name.	Business address.	Character of business.
Abig D. Wagner		
Frisch Bros.		Gold jewelry.
C. Chatwir		Gold chains.
Correll & Co.		Gold jewelry.
Schultz, Leles & Co.		
Schwartz & Gray (Incorporated).		
Davies Mason Company		
Mertz Bros.		
John Jennings		
The Leonhardt Mfg. Co., J. C. Miller, Pres.		
W. H. Schwartz & Co.		
Hendrick & Co., I. R.		
Bergbels & Co.		
Eastwood-Park Company		
The Jewelers' Circular Publishing Co.	11 John street.	
The Crescent Watch Case Co., Irving Smith, president.	21 Maiden Lane.	Manufacturers of watch cases.
Larter & Sons	21-23 Maiden Lane	Manufacturing jewelers.
Sinnock & Sherrill	do.	Do.
Snow & Westcott	do.	Do.
Sloan & Co.	do.	Do.
Roy Watch Case Co., Albert L. Stearns, president.	do.	Manufacturers of watch cases.
N. H. White & Co.	do.	Wholesale jewelers.
Mockowitz Bros.	12 John street.	Manufacturing jewelers.
Kent & Woodland	do.	Do.
A. J. Hedges & Co.	do.	Do.
Ketcham & McDougall.	37-39 Maiden Lane.	Th. manufacturers.
Louis Stern & Co.	37 Maiden lane.	Diamond jewelry.
Max Schweiger	do.	Do.
James Bergman	do.	Do.
White & Young	66 Nassau street.	Manufacturing jewelers.
J. Beck.	do.	Manufacturing jewelers.
Irving, Michaels & Co.	do.	Manufacturing jewelers.
Avery & Brown.	68 Nassau street.	Do.
Hy. Froehlich & Co.	do.	Do.
B. H. Davis & Co.	do.	Do.
J. Bulova.	51 Maiden lane.	Manufacturing jeweler.
Geo. Schulse & Co.	do.	Manufacturing jewelers.
Joseph Mann.	do.	Manufacturing jeweler.
Halley & Co.	do.	Manufacturing jewelers.
Rothschild Bros. Co.	do.	Do.
Eisenstein S. Freed.	51 Maiden Lane.	Manufacturing jewelry.
Jos. Cohn & Bros.	do.	Do.
Henderson & Winters	do.	Do.
Gebhardt & Parker	41 Maiden Lane.	Do.
Rabmanutz & Ratulz.	do.	Do.
Max Boloten	41-43 Maiden Lane, New York City.	Do.
S. Kohn & Co.	41 Maiden Lane.	Do.
Janry Bros.	1 Maiden Lane.	Do.
Janry, Stargo & Kohn.	do.	Do.
American Waltham Watch Co., by Francis A. Appleton, vice-president.	Waltham, Mass.	
Robbins & Appleton, agents of the American Waltham Watch Co.	21 Maiden Lane, New York City.	
Otto Young & Co.	Heyworth Building, Chicago, Ill.	Jobbers of watches, jewelry, etc.
M. A. Mead & Co.	108 State street, Chicago.	Jobber of watches.
Sproehnie & Co.	42 Madison street, Chicago	Do.
Morris, Alister & Co.	134 Wabash avenue, Chicago	Watches and jewelry.
H. F. Hahn & Co.	156 Wabash avenue.	Do.
Hyman, Berg & Co.	State and Washington streets.	Jewelers.
M. F. Barger & Co.	103 State street, Chicago	Jobber in watches.
Stein & Ellbogen Co.	103 State street.	Jobbers of watches and jewelry.
Desprez, Bridges & Noel.	do.	Do.
C. H. Knights & Co.	do.	Do.
Juergens & Andersen	92 State street.	Manufacturing jewelers.
Charles E. Graves & Co.	34-6 East Madison street	Jewelers.
Lapp & Fiershem	195 State street.	Wholesale jewelers.
C. D. Peacock	State and Adams streets	Jewelers.
Spaulding & Co.	Jackson boulevard and State street	Do.
Louis Munheimer & Bros.	103 State street.	Jobbers in watches.
Geo. E. Marshall (Incorporated).	do.	Jewelers.
Schrader Wittstein Co.	do.	Manufacturing jewelers.
J. W. Forsinger	do.	Jobber in watches.
Benj. Allen & Co.	131 Wabash avenue.	Jobbers of watches, jewelry, etc.
Western Watch Case Manufacturing Co.	103 State street.	Manufacturers of cases.









HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

OF THE

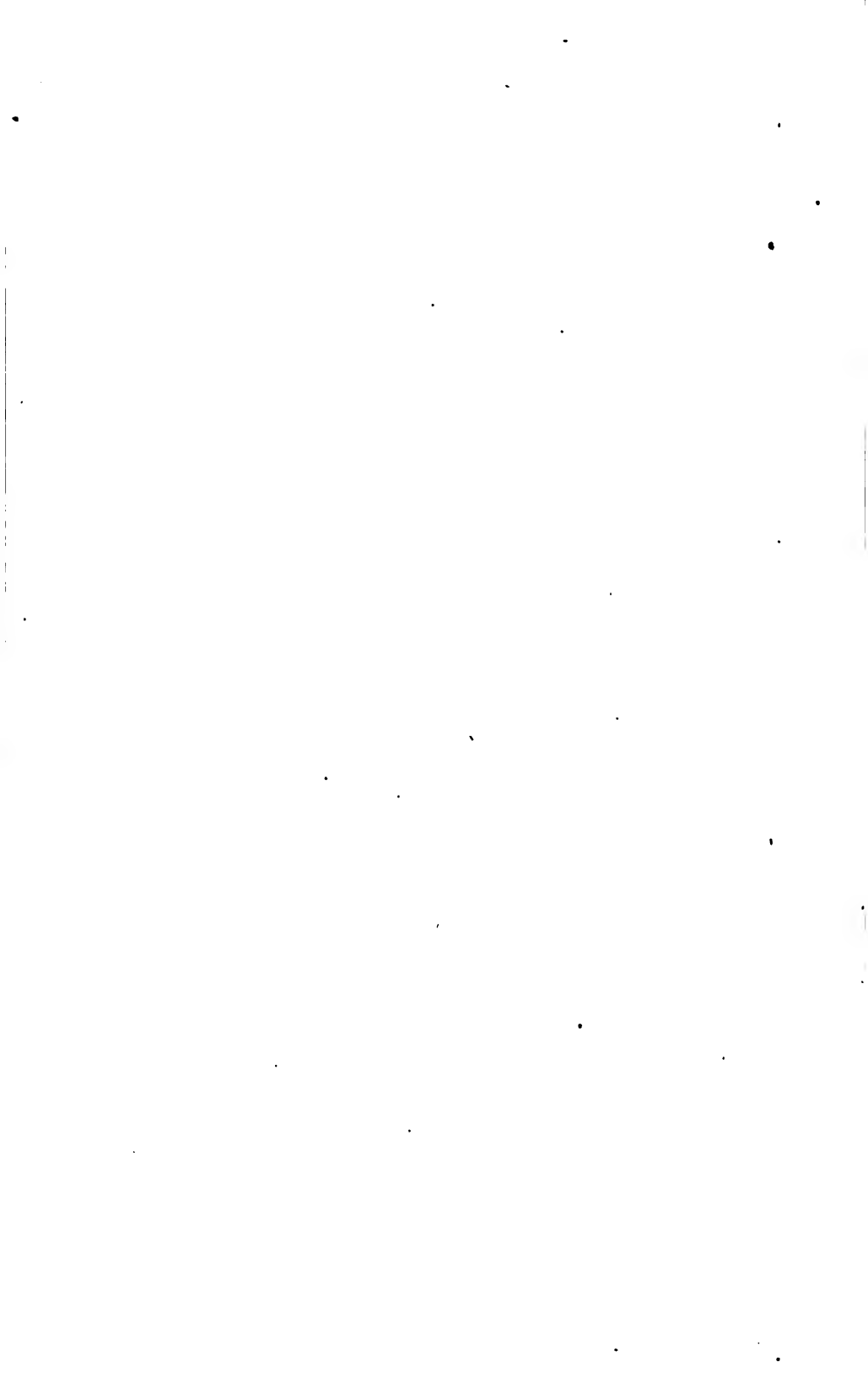
HOUSE OF REPRESENTATIVES

ON

H. R. 15846,

RELATING TO BILLS OF
LADING.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1906.



BILLS OF LADING.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,

Tuesday, March 27, 1906.

The CHAIRMAN. The subject for consideration this morning is H. R. 15846, relating to bills of lading.

STATEMENT OF WILLIAM INGLE, OF BALTIMORE.

Mr. TOWNSEND. Where is your home?

Mr. INGLE. Baltimore. I am cashier of the Merchants' National Bank.

Mr. TOWNSEND. Is there an association of bankers interested in this bill?

Mr. INGLE. Yes, sir. At the last annual convention of the American Bankers' Association, held in this city in October I believe, there was adopted a resolution authorizing the president of that association to appoint a committee to confer with the shippers and carriers and these other parties interested in this matter with the idea of perfecting a document which would be entirely acceptable to everyone. We attempted to frame the matter up and we appointed five gentlemen, four of whom are present this morning.

Mr. TOWNSEND. Who constitutes that committee?

Mr. INGLE. The committee is headed by Mr. Lewis E. Ferry, president of the National Exchange Bank, and the members are William Livingston, president of the Dime Savings Bank of Detroit, and, incidentally, president of the Lake Carriers' Association, one of the largest grain carriers in the country, I believe; F. O. Wetmore, of the National Bank of Chicago, which bank, I assume, handles more paper of this character than any other bank in the United States; James Lewis, cashier of the National Bank of Commerce, of St. Louis, which, in its particular section, dominates the banking interests, I imagine; and myself. My bank handles this class of paper for grain and cotton, mostly from the South.

Mr. TOWNSEND. State as briefly as you can what you wish to about this legislation.

Mr. BURKE. You have stated that you drafted a bill that was satisfactory to all interests concerned. What do you mean by that?

Mr. INGLE. That I had drafted a bill which was satisfactory; no, sir. I said that committee was appointed for the purpose of consulting with these various interests of the bankers, carriers, and shippers so that these three interests, including ours, could get together and perfect some sort of legislation or agreement which would satisfy the demands of the situation.

Mr. BURKE. The object of my question was, knowing but little about this proposition, to ascertain whether you were speaking from the standpoint of the bankers or whether there was an understanding between the shippers, the carriers, and the bankers upon which they could agree.

Mr. INGLE. It was hardly to determine with reference to the respective interests, because they are all commingled. Their interests are identical with the interests of the shipper, because the moment the security is questioned, that moment the bank must stop accepting those papers as collateral, and at that moment the shippers are practically driven out of business, all excepting the monopolist or those having capital enough to take care of the business independently of the shippers.

Mr. RICHARDSON. Is there any association of carriers aiding in this legislation who are here to be heard?

Mr. INGLE. It is an effort at this juncture to reach a determination if possible. After our committee was appointed we had knowledge that there was to be held, in Lakewood, N. J., a conference between two committees, one on the part of the carriers and one on the part of the shippers. We went to that committee and found that it was working under a very excellent rule from its own point of view. They had mutually agreed among themselves that no other parties should be admitted to the conference until they had thrashed it out, and we had restricted our discussion entirely to two points covered by the present bill of lading. At first the carriers and shippers were unable to agree and it looked hopeless. We thought that probably they would not get together at all.

We afterwards had a conference in New York with the uniform bill of lading carriers who have charge of all matters relating to bills of lading in what is known as the official classification territory, being the territory north of the Potomac and Ohio rivers and east of the Mississippi River. It dominates the railroad interests of the country. We found the gentlemen very polite and pleasant, and they gave us assurances of a certain character, but when we talked the matter over we found that if every point was conceded and they had been in a position to bind their principals it would not have the legal effect of an agreement, certainly as to very important matters which the courts have determined. The courts could not determine a paper was a certain thing when the paper itself said it was not.

The great difficulty lies in the fact that we have forty-five States where a certain number of laws have been passed, but only a few have laws on that subject. Those are each of a different character. Outside of eight or ten States there is no legislation on the subject, so that these papers are subject to the operation of common law only, and the common law is interpreted in many ways, so that the holders of these papers have not the faintest idea of what they have. They must be familiar with the laws of the several States, but not with the character of the collateral they have taken.

Bills of lading at present issued, so far as I am informed, are prepared entirely by the carriers. Probably that led up to the bills of lading. I might state what a bill of lading is. Primarily a bill of lading is simply a transportation company's receipt for merchandise to be transported. Up to probably twenty-five years ago we never had any such thing. Rarely was any receipt given but the ordinary

plain receipt of such transportation company which was of no particular value except as evidence against the carrier that the goods had been given to it for transportation. As the country developed it became necessary to use more money to handle the commerce of the country, and the device was adopted of making use of what is known as the order bill of lading, in which the carriers themselves undertake to say that the goods named in this bill of lading will be held and delivered only to the order of the person to whom the papers were drawn, or on his indorsement, exactly as a check or any other evidence of debt. Those papers constitute what are known as the order bill of lading. It is a mere transportation receipt for merchandise which the carrier agrees to retain in his possession until the paper is delivered.

I think probably twenty-five years ago or a little less, most of these papers that found their way into the banks were papers which did not bear the words "not negotiable."

Mr. ADAMSON. What is the difficulty with this last one? Is not that one all right by which they undertake to hold the property subject to order?

Mr. INGLE. Yes; that is what they agree to do. I am now getting a little on legal grounds, but I will state my personal impression. I believe that the railroad has not the faintest idea of stealing the goods and they would probably deliver in nine hundred and ninety-nine cases out of a thousand. That was the moving cause for our effort in asking Congress to enact some law which would make this paper negotiable until canceled. The company as the holder would carry the goods to destination. They might omit to take that paper up at its destination, as they engage to do. Now, the man who owns the paper and who received the goods possibly fails to turn that into the transportation company after he received the goods, but takes it to the bank. The bank sees the contract of the transportation company and the bank handles that paper.

Mr. ADAMSON. The bank can put that man in jail?

Mr. INGLE. Yes; but that does not pay the \$100,000 that the bank may have loaned on that paper.

Mr. ADAMSON. You have got to take chances with rascals.

Mr. INGLE. We are perfectly willing to do that, but we submit that the railroads ought not to be permitted to issue papers of that kind unless the paper can do what it says it will do, and that is that they must engage not to deliver the goods without receiving the paper.

Mr. ADAMSON. When they do not do what they promise, can not you recover upon it?

Mr. INGLE. No; they claim that they have delivered the goods named to its destination; that they have fulfilled their part of the contract.

Mr. TOWNSEND. It is violation of the contract?

Mr. INGLE. It is a violation of the contract, if you choose, but the bank taking that paper received it only subject to the equities of the man giving it. If he had received the goods and the contract was not taken up it is of no avail.

Primarily the railroad company permitting that permits a violation of an express contract. I suppose that we have sent thousands of letters around to different parts of the country, and I hope that you gentlemen may have heard from some of them. We have answers which have been received from thousands of them in return.

This business is the business of the country as a whole. It is largely on the cotton crop of the South and the grain and hay of the Middle West, and the flour of Minnesota, and the fruit of California. You will see that we have left out quite a large territory where the use of the bill of lading is not wide.

Mr. GAINES. Would not a great many inconveniences result from requiring goods to be delivered only on presentation of the bill of lading? A great many shippers would not have the bill with them.

Mr. INGLE. If you had a check and came to me and said, "Old fellow, I have a check for \$500, but I have left it at home and I wish you would cash this and I will bring in the check;" that would not be good business. This matter is provided for in the carriers' regulations. All of their regulations provide that in case of erasure the notation should mean that it was not negotiable. All we ask is that the carriers shall be obliged to live up to their contract. We think that the railroad when it receives a carload of wheat should engage not to deliver that until this particular paper is surrendered.

Mr. ADAMSON. Is that the agreement in that paper?

Mr. INGLE. It is not only on the back of the paper but is printed separately on the face.

Mr. ADAMSON. You say that the court has held that you can not collect that of the railroad.

Mr. INGLE. Yes; it has been so held.

Mr. MANN. Is it not true that it is like a past-due negotiable paper?

Mr. INGLE. It is subject to the equities.

Mr. ADAMSON. Is it not like a paper which is not due but that may be negotiable, after the manner of a private instrument between parties?

Mr. INGLE. No, sir.

Mr. ADAMSON. Is it not like the case where the party holds a paper not due but is transferable afterwards?

Mr. INGLE. This paper is not like a promissory note.

The CHAIRMAN. The chair would like to suggest that the gentleman be permitted to proceed with his statement. After that inquiries can be made, as it disturbs the arrangements of his remarks and diverts him from the objects to which he wishes to address himself.

Mr. TOWNSEND. They have an attorney who will discuss these legal points.

Mr. INGLE. I am not competent to go into the legal phase of the matter. I have a practical knowledge of the effect. I have stated what an actual bill of lading is. Scattered all over the western country are small grain elevators holding 5,000 bushels and upward. Farmers haul their wheat into these elevators and deliver it for cash. The elevator man has a certain capital. When his elevator is full his capital is exhausted. He has either to get rid of his grain or stop buying from the farmer. He gets cars to come up and he loads the grain into the railroad cars. He gets from the railroad company an order bill of lading. That bill of lading he takes to his local bank and the bank, on the faith of that instrument, cashes the draft. He has then an empty elevator and \$5,000 with which to buy more grain. The draft is in possession of the bank and that bank sends that bill of lading with the draft attached for the value of the wheat or the corn to its destination in Chicago or New York. The consignee pays that draft to the bank.

Many of these people who buy grain have only a small capital on which to conduct their business. They send away perhaps 20,000 bushels of wheat with the draft attached. It may be that such a man has no more than \$10,000 in his business. He will take that order bill of lading and borrow money on it to do more business, so that at every step of this proceeding those papers represent value. These papers are all held by the bank until the exporter is ready to send his grain across the water or has sent it across. He then comes, perhaps overnight, turns that in and gets money in the shape of a foreign bill of exchange. He does that the next day or at once. That is the function of a bill of lading.

If you do anything to restrict the usefulness of that instrument you gentlemen can readily see that it would be a serious hardship placed on the commerce of the country. While this matter is being discussed, although we know perfectly well the character of these papers, yet we know that the papers are not what they say they are. As bankers we have determined that we will help this matter to be worked out. The bankers of the country annually advance on securities supposed to be good the sum of \$2,500,000,000. We lend per annum this amount on these papers. If you do anything to disturb that you can see what happens. You have here specimens of blanks. You are possibly familiar with the ordinary bill of lading.

Mr. ADAMSON. What is the difference between a straight bill of lading and an order bill of lading?

Mr. INGLE. The straight bill of lading is principally a plain carrier's receipt, such as was originally made use of back before we had an order bill of lading, just such a receipt as you give when you take a package to the express office. You do not get a demand to surrender that receipt.

Some two or three State legislatures have endeavored to make these papers mean what they say they mean, and have passed statutes which recite that any receipt given by any carrier for merchandise to be delivered shall be a negotiable paper unless it be stated specially that it is nonnegotiable and be so stamped. As a result of that they have gotten over that difficulty by stamping them all nonnegotiable. That nullifies the law. It was the purpose of the statute to make the paper good, whereas now it is not good when it is stamped nonnegotiable.

That is one suggestion. Further than that, up until eighteen months ago, we rarely saw a bill of lading. It was not signed by anybody except the agent of the carrier or some one representing him. Then this uniform bill of lading was provided. It is nominally held in abeyance. These regulations are prohibitive, and I think are arranged for two sets of rates. The shipper will sign a certain contract, and on the bottom of that paper the bill of lading makes that paper a contract enforceable only according to what is in it.

Mr. BARTLETT. That is due to the fact that the shipper gets a reduced rate for doing that.

Mr. INGLE. No, sir; he gets the same rate as he always paid. If he wants to get the paper free from that contract he is fined 20 per cent of the rates he has always paid—not 1 per cent, which would cover the risk, but 20 per cent, which is prohibitive. Those are the regulations. The shipper who waives his common law right pays a fine of 20 per cent for getting the paper subject to common-law interpretation.

Mr. BARTLETT. The ordinary common-law statute, in a number of States—notably my own State of Georgia—provides a waiver, and that waiver is vital to the railroad interests because it is against public policy. Unless in pursuance of that waiver the shipper gets some benefit he would not otherwise be benefited by the waiver.

Mr. INGLE. Technically he would not get the benefit of this 20 per cent. Only 12 States in the Union have laws on the subject. I have referred to the nonnegotiable feature and the contract feature. Those are vital and objectionable to the holder. We have no selfish purpose. Every holder of these papers is in exactly the same position. Furthermore, many of these papers are altered in material particulars, especially as to dates. Many of them are prepared by the shippers themselves and taken to the carrier. He may begin sending off a shipment one day and does not get it down until the next day. He takes the old bill, and the carrier makes an “8” out of a “7,” and that will go. But he will keep on making it 1805 without altering the year of those other altered bills. Every such alteration of these bills voids that instrument. We can not go into court with it. The clause on the back is supposed to cover that. It says that any alteration or erasure that shall be made shall be void. The railroad company tells us in a pleasant way that it means exactly what it says, but any alteration of that paper affects that and throws it back and makes it enforceable only in such terms. We can not go into court with it because the railroad attorney is there, and he will say that this is an altered bill and that we have no standing in court.

That is the trouble. Certainly we think that 20 per cent of these papers we receive are altered bills. There is another difficulty in the way.

I have referred to the straight consignment of bills or shippers' receipts.

These papers are carelessly drawn—drawn by everybody, and those are known as straight bills. The railroad has no responsibility whatever. This man takes this straight consignment bill, and all that is necessary to do is to take a pen and write “order of” before the name of the consignee, and to all intents and purposes, in the hands of a third party, that is a bona fide order bill of lading. So that we think if the railroad company be permitted to issue these papers to be negotiable at all, that they should be so beyond doubt as far as possible. We think that the words “order of” should be printed in. I think that is a reasonable suggestion, and I do not think that they have any serious objection to doing that. That is the thing that forces itself to the front when we begin discussing this subject. I have here bills which have been altered in both particulars. It is one of the difficulties to be overcome. They are alterations, erasures, and changes from the straight shipments to order shipments. I have at present three bills. We do not question them. They may be paid, and they may not be. Maybe the fellow has gone wrong and the only satisfaction that we will get will be in sending him to jail. I have seen thousands of altered bills, but I do not believe that I have ever seen an alteration that has been noted. We have two bills. They are not negotiable. That is done by scratching out the word “not,” which makes them all right. I do not know who scratched out that word, but I have no doubt that it was done before issuance.

Mr. ADAMSON. Do you not get that man's oath?

Mr. INGLE. An oath does not make it any better when a man wants to rob you.

Mr. RICHARDSON. You stated in nine hundred and ninety-nine cases out of a thousand the railroad delivers the property.

Mr. INGLE. Yes; it delivers the property, but in the one-thousandth case we lose the money.

Mr. BARTLETT. The purpose of this bill is to make these negotiable. Suppose somebody brought you a promissory note with some sort of a disfiguration on its face. Would you take it?

Mr. INGLE. Not unless I knew the maker and could enforce it against the maker. The instrument is against the maker.

Mr. BARTLETT. Do you believe that you would take more chances than on a promissory note?

Mr. INGLE. If the banks of the United States as a whole were to decline to accept these papers, this business would have to take care of itself.

Mr. ADAMSON. Can you tell whether this was made by the agent or whether by the other fellow?

Mr. INGLE. We have no objection to taking the ordinary business chances.

Mr. TOWNSEND. Does the agent make a notation where he makes a change?

Mr. INGLE. If he is an agent, he makes a notation, but if that paper is accepted and the notation is not made, we are the victims. What I would submit is this: That when these corporations issue papers of that sort they should be in such form that they would be negotiable.

Mr. TOWNSEND. Alterations should be signed?

Mr. INGLE. Yes, sir.

Mr. RICHARDSON. Has your bank ever suffered in any way?

Mr. INGLE. Yes, sir; to the extent of \$84,000.

Mr. ADAMSON. Suppose the railroad has delivered the goods?

Mr. INGLE. That gives rise to all these figures of a differing character. Each transaction has its own particular weakness—some as to alterations and some—

Mr. ADAMSON. And do you say that the reason you lost in these cases was that the bills were assigned to you after the goods had been delivered?

Mr. INGLE. Yes, sir; and the bills not having been taken up as they should have been. Every bank relies upon that absolute promise.

Mr. ADAMSON. Has your association or committee considered the subject as to whether or not you should force any American citizen or any parties in the United States to make contracts against their will?

Mr. INGLE. I should think you have police duty, gentlemen, in the United States, and if a person enters into any contract which they will not live up to you have a right to punish them.

Mr. SHERMAN. Would it not meet the case better for the banking association to prepare the public, notifying the public that they would not accept papers drawn except in a certain way?

Mr. INGLE. But what would be the effect of that, of our shutting down on this thing? You must not think that we are entirely selfish in this matter.

Mr. SHERMAN. You are not asking Congress to compel the making of any kind of a contract, but merely to compel them to live up to the contracts that they make?

Mr. INGLE. Yes, sir; to live up to the contracts that they make.

Mr. ADAMSON. I have asked these questions on this bill that we are talking about, which is right here [indicating H. R. 15846].

Mr. SHERMAN. You want them to live up to their contracts that they do make?

Mr. INGLE. That is right, and because we do not want them to take advantage of the fact that under this law they would be able to evade all these liabilities.

Mr. RICHARDSON. How do you explain the fact that he is not liable in these matters? If a man violates a contract, he is responsible in an ordinary suit in all the affairs of life.

Mr. INGLE. But the difficulty is that in this case you think that you have a contract and—

Mr. RICHARDSON. You must look out for yourself as everybody else. Everyone else has to look out for himself in these matters.

Mr. INGLE. We are not selfish in this matter at all. It is very easy for the banks to decline to accept these papers. If the banks should refuse to accept these things as collateral, they could have no difficulty with them.

Mr. ADAMSON. It seems to me that you should be required to look out and see that you do not take these things if they are bad. Generations and nations have lived according to that rule since the beginning of time.

Mr. INGLE. I beg your pardon.

Mr. ADAMSON. I say that a man taking any paper should look out and know what he is getting.

Mr. BARTLETT. You say that your bank lost \$84,000 by reason of a transaction of this sort. How recently had those bills of lading been issued in that case when you loaned the money?

Mr. INGLE. I think they were raised; the dates were modernized from six months to a year. I do not think any of the bills were more than a year old.

Mr. BARTLETT. The bills of lading were a year old when you loaned the money on them?

Mr. INGLE. Yes, sir; but how did we know it?

Mr. TOWNSEND. You had no means of telling?

Mr. INGLE. Absolutely none. If you do not think that the people that you are dealing with are pretty good people anyhow, you might perhaps get the idea of inquiring and examining minutely, but as a matter of fact everybody takes these things.

Mr. BARTLETT. Is not this a fact—I know it is so in the part of the country that I live in. Take a commission merchant in my town; a commission broker ships a carload of corn or meat in Chicago. All those things are all cash, generally. He directs the merchant in Chicago to ship a carload of meat or corn, or whatever he orders, to A B, and to attach a draft to the bill of lading and notify the purchaser—the consignee. That matter, that bill of lading with the draft attached, comes faster than the carload of merchandise, or whatever it is. It gets to the bank, and the man who orders it pays the draft and gets the bill of lading, and the railroad delivers it to the consignee upon the presentation of the bill of lading. I know that is the uniform practice in my part of the country.

Mr. INGLE. That is right. But suppose for any reason the goods are delivered without the surrender of the bill of lading. Suppose that the agent of the railroad is a pretty good fellow, and the consignee

is a good fellow, and they know each other pretty well, and the man that is getting the consignment comes in and he says: "John, look here, I have got this bill of lading, but I declare I forgot to put it in my pocket when I came over here." I wish you would let me have this carload of goods, and I will send you the bill of lading." That happens thousands and thousands of times.

Mr. BARTLETT. It happened in my town, and the freight agent who delivered the freight without the bill of lading, his securities had to pay for the loss, and they did it. I know the man, as clever a man as I ever saw, was caught in that way, and he not only paid the loss of his bondsmen, but he lost his job.

Mr. MANN. How long do you think an outstanding bill of lading ought to be negotiable after the goods are delivered, one year or ten years?

Mr. INGLE. That is a question that is moot just at the moment. I think, theoretically, there ought never to be anything like a spent bill of lading any more than there ought to be a spent certificate of deposit. If you come into my bank and get a certificate of deposit for a thousand dollars, that should be good until it is canceled, if it is fifty years. That is the way that our bank does—

Mr. MANN. You do not think that those cases are analogous, that of a bank that puts the money in a vault and lends it out—

Mr. INGLE. I said that the question is to-day moot. If the goods come it may be necessary in the case of a loss of the mail, or if for any reason the bill of lading is lost, to deliver without the bill. Mind you, that is the odd case that happens; that is only the odd case. These bills come in in a very nice, comfortable way as a rule. But if a man is not able to present his bill of lading, then the carrier will take a bond of indemnity just as any one else does to protect themselves against the operation of any law which they are technically breaking. I think, in view of the fact that these gentlemen are not operating within four walls and have not direct control all the time of all of this property, that it is altogether fair that there should be some limitations of the operation of this law for the particular reason that they get their bondsmen to give the bonds of indemnity, and you can never tell when their sureties may die or anything might happen touching their security, so that we think that the term during which those bills should be alive ought to be as long as possible.

Mr. MANN. How long?

Mr. INGLE. I think three years at least, to cover the ordinary statute limitations in most of the States.

Mr. ADAMSON. Ought it to be any longer than you could reasonably require the railroad to hold and store the goods?

Mr. INGLE. We have bills of lading at this moment two or three years old, shipments from around the Mississippi Valley. We know that if that man will put his goods on a car it will take four or five or six days in the ordinary course of traffic to bring those goods from Omaha to New York. We do not care how long it is, so long as we have an inviolable contract of a railroad. There are two or three months in the winter time when the lakes are frozen, and we have had those bills four or five months old, and as good as they were the day they were written; so that you can not determine the life of a bill from its date, particularly when the date is altered.

Mr. ADAMSON. Do not the railroads stipulate how long they shall hold those goods?

Mr. INGLE. Yes, sir; but those railroads, if they are dealing with a pretty good customer, are not particular about enforcing that. If they are dealing with a pretty good customer, those cars go to their destination, and they do not press that customer to take off his goods within a day or a week or a month. They are willing to let him have free storage.

Mr. ADAMSON. Of course some things are less perishable than others, and they have their demurrage charge which they will enforce in certain instances.

Mr. INGLE. Yes; but in a broad way they are not compelled to enforce that. We have nothing to do with the police regulations. We ask that these papers be made negotiable, as they tell us they intend. We ask that we be given the papers on a form on which the words "order of" shall be printed, so as to lessen the opportunities for their misuse. We ask that any alteration of these bills be ineffective as against their operation in accordance with their original terms. That is exactly what they tell us this clause of their own means. They are perfectly willing that that be enforceable according to its original tenor.

The only other thing that I have not touched upon, one very important point, is this: Under the interpretation of some of the courts, and indeed under the laws of some of the States, any holder subsequent to the party to whom the bill is issued becomes a warrantor for the quantity and quality of the goods in that bill of lading. I can understand how originally that is so, but, as a matter of fact, in practice, it was an entirely new situation. It was apparently never thought of when the Harter Act was enacted. But, as a matter of fact, now any subsequent holder of that paper becomes a guarantor and warrantor of the character and quality of the goods mentioned in that bill of lading; so that if a man down in Alabama ships a hundred bales of cotton to a man in Boston, and attaches that to a draft, the bank down there does not bother upon those things. It is a bill of lading for a hundred bales of cotton. Suppose it turns out when that cotton gets to Boston that it is cotton waste. Now the Boston man has not recourse against the man he is dealing with. The only purpose in attaching that bill is to carry the title in the goods. The man has paid for it, but after it is opened it is found to be cotton waste instead of cotton. What happens? The fellow in Boston comes back, and the bank has to pay, unless we have to take the trouble of opening all those papers and distinctly waiving all that responsibility.

Mr. ADAMSON. You say the first bank in Alabama did not bother to examine that cotton?

Mr. INGLE. They did not go down and specifically examine it. They had a bill of lading for 100 bales of cotton. They are relying on that. Everybody is straight until they run off the track at one time. They deal with this man for months and years, and all of a sudden he thinks, "They are pretty well acquainted with me and they think pretty well of me, and it is time to make a ten-strike, boys."

Mr. ADAMSON. That could not possibly happen in Alabama.

Mr. INGLE. Of course I know that it could not. I selected Alabama for that reason, because it could not possibly happen there.

Mr. ADAMSON. It is known throughout the world that it never did.

Mr. INGLE. The only thing in this bill that we ask for, and which we are not told that the railroad people intend to give us by their

present papers—the only single thing we ask for which they tell us they do not intend to furnish now—is the making of the carriers responsible for the acts of their agents. You understand.

A railroad agent out West, or anywhere in the world, let us suppose, is in collusion with any third party. Or it may be without collusion, if you choose. That man on his own responsibility simply issues an order bill of lading, the goods not having been delivered—there never having been any such goods. That bill is hypothecated with the bank. The courts in some States have held that this agent exceeded his authority. Other States have had to cover it by a law. All the laws are different, you understand. Of course the agent did exceed his authority, but how is the holder of any of these papers to judge? These papers are issued by the thousand.

If I may revert to my original comparison, if you come in and ask me for a certificate of deposit for \$500, and I choose to give you that certificate of deposit, you can keep that certificate. My bank is obliged to pay that certificate of deposit when it comes in, in anybody's hands but yours. We have that responsibility for it. But the carriers say they will not have that. How is any one in the world to know that any single one of those papers is issued by authority.

Mr. RUSSELL. Suppose some particular consignor takes goods of great value to a carrier, we will say silk, and represents it to be silk, and it is boxed up and delivered to the carrier, and the carrier issues a bill of lading; then it turns out that it is not silk, but goods of a very inferior quality. Is the purpose of this bill to make the carrier responsible in that case?

Mr. INGLE. No, sir; we have made an amendment to it which will come out in regular order covering that situation.

Mr. MANN. You gave an instance a while ago of cotton coming from Birmingham to Boston, where it might be discovered to be cotton waste. Do you propose, if that untrue bill of lading is issued for that at Birmingham as cotton, that it is the duty of the railroad to open all that cotton and see whether it is cotton or cotton waste?

Mr. INGLE. No, sir; all we want to do in making this waiver is that in view of any misrepresentation of any shipment from Birmingham to Boston, that it is primarily and ultimately a matter entirely between the shipper and the consignee. You see what I mean.

Mr. MANN. No, sir; I do not see what you mean.

Mr. INGLE. If this shipment of cotton turns out to be cotton waste, it is not a matter in which the railroad or the banks have any interest at all. It is a matter which must be determined between the man in Boston and the man in Birmingham without bringing the banks in at all.

Mr. MANN. How can it be? The banks are in.

Mr. INGLE. No, sir; not at all.

Mr. MANN. The banks are out the money; that brings them in.

Mr. INGLE. No, sir; we have collected our money for it. The Boston man has paid for that thing on the theory that it is cotton. He is in the hands of his own customer down in Birmingham.

Mr. MANN. Yes; but in order to get the money he has borrowed money in a Boston bank on that bill of lading.

Mr. INGLE. But he may have responsibility; he may be responsible outside of his own cotton.

Mr. MANN. He may or may not have.

Mr. INGLE. If he does not have, that is a business risk that we take. But we do not want to warrant the quantity and quality of these goods. The effect is to relieve us of the annoyance and trouble of having to open these papers and go through with a stamp and carefully and particularly waive responsibility.

Mr. MANN. You want a provision that the man who negotiates a bill of lading shall not warrant the quantity and the quality of the goods?

Mr. INGLE. No, sir.

Mr. MANN. That no intermediary shall?

Mr. INGLE. That no intermediary shall. No intermediary is supposed to know anything about the quantity or quality of the goods. If they can not collect their money out of the customer, that is a business risk.

Mr. MANN. What you want is a provision exempting you from the present liability which the law lays on you.

Mr. INGLE. As warrantor.

Mr. RICHARDSON. Do you not know that in the case of bales of cotton we have that cotton in bonded warehouses, and those bonded warehousemen certify to all that?

Mr. INGLE. No, sir.

Mr. RICHARDSON. There is such an officer, and he has a bonded warehouse, and he gives the certificate of what the cotton weighed.

Mr. INGLE. But those do not accompany the bill of lading.

Mr. RICHARDSON. But it is a statement to the banker.

Mr. INGLE. No, sir; we have never seen such a thing, except incidentally.

Mr. RICHARDSON. It is a common thing, and the banker then has the bill of lading which goes on to Boston.

Mr. INGLE. The way I understand it is handled is this: A man in some place down in North Carolina will make a shipment of cotton. He will ship that cotton to Boston via a compress at Atlanta, or Charlotte, if you choose. Now, here is the original Southern Railway bill of lading for a hundred bales of cotton. It goes along and gets in this compress. The original bill of lading is the only evidence of that property outstanding. That cotton is compressed and again goes forward—not the identical cotton, but cotton of the same grade goes forward—and is delivered in fulfillment of that original bill of lading.

I did not mean to monopolize all this time. I hope that I have not wearied you gentlemen.

Mr. RICHARDSON. Do you not think a banker should have some responsibility; that when he goes to attach a bill of lading, or draft to it, that he would find some way of finding from the cotton warehouse how many bales are there and how much they weigh?

Mr. INGLE. You know, as a matter of fact, as to cotton the marketable bale is 500 pounds of cotton. The grades of that cotton are matters fairly well understood at the starting place, at least. I only referred to cotton because it was a staple.

Mr. RICHARDSON. And a very important one.

Mr. INGLE. And a very important one.

Mr. BURKE. Do you think it is a fair comparison to compare a bill of lading which may be issued by the agent of a railroad company at any station with a certificate of deposit issued by a bank?

Mr. STEVENS. In other words, do you allow any bookkeeper to issue certificates of deposit?

Mr. INGLE. Not to sign them.

Mr. STEVENS. It must be an executive officer?

Mr. INGLE. Yes, sir; and the agent is under their provisions an authorized officer to issue bills of lading. If we take any bills of lading which are not signed by the authorized agent to issue such bills, it is our loss; but if we take a bill of lading issued by an officer authorized to issue them, and who does issue them day after day, and who does issue a fraudulent one, we say that that carrier should be responsible for it.

Mr. BURKE. I think that you stated that the banks of the country handled about two and a half billions of paper of this kind last year?

Mr. INGLE. Yes, sir.

Mr. BURKE. What loss, if you know, if any, did the banks incur from these causes which you have been describing?

Mr. INGLE. I can not answer you that question in dollars.

Mr. BARTLETT. What per cent; can you answer that?

Mr. INGLE. No, sir; but it is hundreds of thousands of dollars.

Mr. BURKE. How much?

Mr. INGLE. I will state a case. I think this case out in St. Joseph was made largely possible by reason of the fact that the word "order" was not printed in this bill. There is a case in which \$400,000 was lost, only a few months ago.

Mr. BURKE. How do you think these losses would compare with those losses of the banks in other classes of business?

Mr. INGLE. Many banks do not handle these bills at all. Some of them do not handle them for the reason that their environment does not call upon them to handle them, and others for the deliberate reason that they will not; they are afraid of them.

Mr. TOWNSEND. Do banks take pleasure in publishing their losses?

Mr. INGLE. No, sir; they do not like to do it. They will not do it. Some of them are kind enough to tell us about their losses, but some of them that we know have suffered such losses gave us everything in the house except the fact that they had lost \$10,000, \$20,000, or \$30,000.

Mr. BURKE. It is impossible for a bank to do any business of any kind or description without there being some chance of loss?

Mr. INGLE. Exactly so.

Mr. BURKE. What I was getting at was whether the percentage of loss in this business was greater than the percentage of loss in the general loaning of money.

Mr. INGLE. The loaning of money on bills of lading is a matter of sufferance, and the risk is greater all the time; and if we were dealing with anybody but responsible railroad people, we would not touch them for a minute, because we know that no railroad undertakes to deliberately wrong anybody in the issuance of papers of that kind; but we know the minute that we get a stale paper it is not worth the paper it is written upon.

Mr. MANN. Do you loan money on these bills of lading to people, as a common thing, whom you know nothing about?

Mr. INGLE. No, sir; we loan to people who are our customers, and as I say, everybody is innocent until they are proven guilty.

Mr. MANN. Do you think if a man produces a bill of lading that is three years old—

Mr. INGLE. He never produces one that is apparently three years old.

Mr. MANN. You say that he produces one on which the date has been changed by himself. Clearly the railroad would not be responsible for that. Your proposition is that the bills indefinitely now are good for three years. Do you think if a man produced a bill of lading to you that showed on its face it was three years old, it would be your duty to ascertain whether those goods had been delivered before you loaned money on that bill?

Mr. INGLE. Unquestionably it would.

Mr. MANN. It would not if we put into the law the provision that it should be delivered within a year.

Mr. INGLE. No bank would do anything silly.

Mr. MANN. It would not be silly if the bill was perfectly good.

Mr. INGLE. I beg pardon. I did not mean to use that word "silly."

Mr. MANN. You want to make the railroad responsible for it.

Mr. INGLE (continuing). I am confident that the business of the country is not conducted that way.

Mr. MANN. I am confident that it is not conducted that way; but what you wish to do is to have it so that it shall be conducted that way.

Mr. INGLE. Here is a paper. It is a mere question of a paper that they promise to take up. You should never see one of these papers under any conditions.

Mr. MANN. Assume that an agent is negligent and does not take it up, as I presume often happens.

Mr. INGLE. Yes, sir.

Mr. MANN. Now, if that is presented to you long after the time when it ordinarily would be taken up, is it not your duty to make an investigation?

Mr. INGLE. Unquestionably; and I think any bank in the country would do so.

Mr. MANN. Do you want us to pass a law providing that it is not your duty to do it?

Mr. INGLE. No, sir. Well, if you choose to put it that way, we do. We think that paper should be given for a generous length of time.

Mr. ADAMSON. Do you think that the number of rascals would be reduced or the opportunities for fraud would be diminished by enacting this bill?

Mr. INGLE. Unquestionably. Gentlemen, it is such a simple thing. We only ask to make really effective what these people give. What possible objection could there be to it?

Mr. RUSSELL. I notice you say in section 3 of this bill:

That every negotiable bill of lading issued by a carrier or by the agent of a carrier authorized to issue bills of lading in the hands of a bona fide holder for value shall be conclusive evidence as against the issuing carrier that the goods therein described have been received, notwithstanding there has been no delivery, or only a partial delivery, to such carrier of such goods.

Mr. INGLE. Had I not better ask Mr. Peyton to talk to you on that?

Mr. STEVENS. You stated that quite a portion of the bills you received were made out by the shipper in his own handwriting, and changes would probably be in his own handwriting. Have you any

notion, from your experience, what proportion is made out by the shipper himself?

Mr. INGLE. I imagine that 90 per cent of the ordinary order bills current to-day are prepared in the office of the shipper.

Mr. STEVENS. They are men with some business experience and accustomed to dealing with banks?

Mr. INGLE. Yes, sir; and they know that in practice an alteration will not have any effect so far as getting their goods shipped by the carrier is concerned.

Mr. STEVENS. But it might make a difference if their bank refused them credit when the bill came up.

Mr. INGLE. And, on the other hand, there is the compact organization of the railroads, who have their own committees, composed of a few gentlemen whose words can effect a complete change all over the country. On the other hand, we are dealing with 20,000 banks in the country, and it is not to be supposed that the cashier of a little bank out in a small community out in the Territories would have any particular technical knowledge of all these conditions and papers. He has probably never read the negotiable-instrument law. Ninety-nine per cent of his business is done on faith in his particular man. They come up to us, bushels of all kinds of papers, liens on crops, and all that kind of thing, which, outside of the faith we have in the bank's indorsement, would not be enforceable in our hands. I do not suppose 20 per cent of them would be collectible.

Mr. BARTLETT. I want to ask this with reference to the amount of losses occasioned to the banks, which Mr. Burke asked you with reference to. Do you think it would amount to as much as $1\frac{1}{2}$ or 1 per cent?

Mr. INGLE. Dear me, no, sir; 1 per cent on two and a half billion dollars; never; dear me, no, sir. We do not lose one-half of 1 per cent.

The CHAIRMAN. If you have finished I would like to ask you a question or two. As a practical man, what effect would the enactment of this bill into law have upon the railway rates throughout the country?

Mr. INGLE. I do not see that it has the slightest connection with that subject at all.

The CHAIRMAN. Would it increase the expenditures or the liabilities of railway companies?

Mr. INGLE. It would not increase the liabilities of railway companies one iota beyond their professed liability. You understand what I mean, sir.

The CHAIRMAN. Would it increase their liabilities as a matter of fact?

Mr. INGLE. As a matter of fact it would increase their liabilities, because they would have to assume the responsibilities which they undertake, and which they evade the minute they are confronted with a spent paper.

The CHAIRMAN. What would you say the amount of that increased liability would be?

Mr. INGLE. Let us say, in a general way, between \$100,000 and \$200,000 a year in the aggregate.

The CHAIRMAN. In the whole business of the United States?

Mr. INGLE. In the whole business of the United States.

The CHAIRMAN. What would be the effect of this legislation upon

requiring them to employ a different class, and a higher priced and more responsible class, of agents throughout the entire region?

Mr. INGLE. That, of course, is another subject. All of their agents now are gentlemen having a multiplicity of duties. The smaller the town the more the responsibility that is placed upon one man. That man has charge of the ticket office. I guarantee that that man makes a proper return for all of his tickets or they get the reason why. That man is the Adams Express messenger and the telegraph operator and 40 other things. Now, these ordinary papers are not the usual papers used in a small town. He would probably be called upon to issue, during nine months of the year, none at all. During the grain-moving period he would have to issue perhaps one or two a day. That is an inappreciable amount of work, and no additional labor, the minute they issue their forms. There would be no added expense.

The CHAIRMAN. You think they would be just as safe in putting their power to create obligations for them into the hands of these insignificant agents as they are now; there would be no more liability?

Mr. INGLE. I can not conceive that there would be. Of course, you must remember that it is a very rare thing now for such fraud to be committed. Indeed, now he has in the first place to get some one with him to connive.

The CHAIRMAN. Under this law it would put the power in the hands of every agent they have to bind them in this way, as in the case illustrated by Mr. Russell, of receipting for silks where there was an inferior article shipped—

Mr. INGLE. We have provided for this, Mr. Chairman.

The CHAIRMAN (continuing). Or giving the bill of lading where no property at all was received. You would put that power into the hands of every one of the railway agents in all the little stations throughout this country.

Mr. INGLE. The various States, one after the other, are enacting just such laws.

The CHAIRMAN. I am asking your opinion whether or not that would increase the freight rates throughout the country.

Mr. INGLE. I beg your pardon, sir. I really think that in comparison with the entire volume of business the percentage would be such an insignificant figure that it would not be appreciable. I think, in other words, that if the worst should come to the worst, and there should be an increase of the freight rates of the country of 1 per cent, the railroads would soon accumulate such an enormous fund to cover their liabilities of every kind and description that they could pay an extra dividend out of the proceeds of that fund, outside of their outlay for that contingency.

Mr. BARTLETT. I wanted to ask this gentleman another question. Has he said anything about, or thought anything about, what the effect of the passage of this act would be upon the rights of the shipper or vender to stop in transitu goods that had been shipped when he afterwards ascertained that the man who sold them had become insolvent between the time of the shipment and the time of the arrival of the goods at their destination?

Mr. INGLE. Under the order bill that man would—

Mr. BARTLETT. I am not speaking of the order bill.

Mr. INGLE. If that draft has not been paid, and that man discovers that he is dealing with a fraud, on the other hand there is no reason

why he should not order back through his bank any paper with that draft attached.

Mr. BARTLETT. But the bank transferred it to you, and your transferring it to somebody else in New York carries with it the bill of lading.

Mr. INGLE. Of course it does, but the man that starts that bill can telegraph to us, "Do not deliver those goods, but return the draft," and then we telegraph to New York to return that draft upon presentation, and he can stop that at any step of its progress, short of actual delivery.

Mr. BARTLETT. And short of the presentation of the bill of lading?

Mr. INGLE. Yes, sir.

Mr. GAINES. Section 8 provides that the railroad must issue a bill of lading upon request.

Mr. INGLE. That is to provide for this——

Mr. GAINES. Section 5 then says that where the party to whom a negotiable bill of lading has been issued has——

Mr. INGLE. We have withdrawn section 5 entirely.

Mr. BARTLETT. And section 3 also?

Mr. INGLE. No, sir; section 3 is vital.

Mr. BARTLETT. I should think it was, according to your ideas.

(At 12 o'clock m. the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee reassembled in pursuance to recess, Hon. William P. Hepburn in the chair.

The CHAIRMAN. The committee will be in order.

Mr. TOWNSEND. Mr. Paton, will you take the floor? Please tell us your name and business.

STATEMENT OF MR. THOMAS B. PATON, ATTORNEY AT LAW, NEW YORK CITY, N. Y., COUNSEL TO COMMITTEE ON BILLS OF LADING, AMERICAN BANKERS' ASSOCIATION.

Mr. PATON. My name is Thomas B. Paton, of the New York bar, representing the bankers' committee on bills of lading.

Mr. Chairman and members of the committee. I was going to remark that judging from the gatling-gun volley of questions addressed to the speaker this morning I was reminded of the story of the notice posted in a western dance hall: "Please do not shoot the piano player—he is doing the best he can." So I suppose you will remember that.

I am here, by request, to explain the provisions of the bill (H. R. 15846) relating to bills of lading issued by carriers for the interstate transportation of property, etc., which is before this committee; and leading up to that, showing or attempting to show, if possible, the necessity why Congress should enact such a bill or a bill containing the points attempted to be covered by this bill, I desire to submit a very few preliminary remarks. I will not take over three or four minutes.

To begin with simplicity, so to speak, before we go on with complexity, in the year 1904, \$20,000,000,000 of the raw and manufactured products of this country were produced, the great proportion of which being intrusted to common carriers and crossing State lines. In

the delivery of these goods to the carrier, of course, it is not possible for the shipper himself or his agent to go with these goods from the point of shipment to the point of destination. The shipper must get some written evidence of the fact of shipment, so that the bill of lading has developed as a necessity, a necessary essential to such shipments.

The shipper takes a bill of lading, which is a receipt for the goods and a contract to deliver them at the destination. Originally at common law there was no third party connected with this bill of lading. There was no obligation to take up this bill of lading at its destination. It was simply a receipt or memorandum. It was what is known as a straight consignment, a bill issued to John Smith, of San Francisco, consigned to Peter Jones at New York. If that was the condition at the present day, there would be no such question before you as this; but it has so developed that the shippers of this vast amount of goods can not do it on their own capital. They can not do it on straight consignments. They have got to borrow money and use the capital of others with which to conduct this business.

That is a conceded fact. Now, in borrowing money they have to have security; they have to give security. No bank can lend money without security. Therefore from that situation has developed the idea which is expressed in the existing bill of lading—that a bill shall stand for the goods. It shall be good for the goods. It shall be taken up on delivery of the goods. It shall represent the title and carry the title to the goods.

I would like to read that clause in the existing bill of lading, because that is the clause which purports to give the holder the security, the right to the goods. [Reads:]

If the word "order" is written hereon, immediately before or after the name of the party to whose order the property is consigned, without any condition or limitation other than the name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly indorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading.

In other words, in the case of a straight consignment, a consignment which names the consignee, they do not have to take up the bill; but where the word "order" is written on the bill, then they agree to take it up, so that the bill can represent the property, can be good for the goods; and where it is loaned on, the banker can hold it to secure the loan, as he holds the goods and can look to the railroad to deliver those goods to him.

That is the theory, but how does it work out in practice? Is this a security? It is not at present, and there have been numerous losses to bankers, and they are increasing every year. There are some weak points in this security, and those weak points we are endeavoring to cover in this bill.

Now, to simply enumerate those weak points, in the first place they agree to take the bill up or deliver the goods.

Mr. ESCH. There is a little confusion as to the word "bill." Do you mean the pending measure or the sample bill of lading?

Mr. PATON. Hereafter I will speak of the act in referring to this proposed legislation, and of the bill of lading in referring to this sample bill of lading. The first weak point in which this is not a security is this: Here is an "order" bill of lading, under which the carrier

contracts to require the surrender before the taking up of the property. Generally it is done; sometimes it is not done. Take those cases where it is not done. Suppose the holder of this bill who has received his goods proves dishonest. He goes to a bank and pledges it. The bank, seeing that it is an "order" bill of lading, good for the goods, good against the railroads presumably—because it would not be outstanding if the goods were delivered—loans money on it, but when it presents the bill of lading to the carrier and calls for those goods, the bank finds that the goods have been delivered. The bank then goes to court. Your contract is that you would take up or require the surrender of this bill upon the delivery of the goods. The court says:

True; the carrier broke the contract, but when it delivered the goods to the lawful owner under this contract the functions of the bill of lading ceased. It discharged the bill. The bill no longer has any validity. It was a spent bill. It was no good. Thereafter the negotiation of this spent, invalid, worthless bill was a fraud, and you can not recover from the railroads, because they have delivered the property to the rightful owner.

It is the same theory of law exactly as the payment of a negotiable instrument at maturity. That has been so held. That is one weak point.

Now, a second weak point is this: Bills which are not intended for negotiation—

Mr. STEVENS. Will you please inform us what courts have held that?

Mr. PATON. The New York court of appeals.

Mr. STEVENS. Have you the decision at hand?

Mr. PATON. I have somewhere. I can cite it later.

Mr. STEVENS. Please produce it to us at your convenience.

Mr. PATON. Yes, sir. The second weak point is this: A straight bill, a bill not intended for negotiation, is issued. It is mailed to the consignee named in the bill. The words "order of" are not on the bill. The contract as it exists does not require the taking up of this bill. The carrier does not take up the bill. After receiving the goods, the holder, who has received them, proves dishonest. He simply writes in the words "order of" and negotiates it to a bank. That has been done time and again. He fraudulently changes that to an "order" bill of lading. It is a fraud, but this present form of bill of lading permits that.

That is the second weak point. Now, a third weak point is this: These bills are often written on barrels and made out in lead pencil, carelessly drawn, and made susceptible to all kinds of alteration. The rule of law is that a material alteration voids an instrument. In the case of this bank in Baltimore, referred to this morning, they had some thirty-odd bills of lading, "order" bills of lading, which the railroad did not require the surrender of when they delivered the goods. The owner of this bill, the holder of this bill, after he has received the goods, gets in a tight hole, and he takes and changes the date three or four months ahead to make it appear fresh, as representing goods in transit, and he puts it in bank, in the bank he was dealing with for years, and \$84,000 was the amount of loss in that transaction.

The case went up to the court of appeals of Maryland, and the court of appeals of Maryland held that the bill was altered in a material

respect. The alteration of the bill voided it completely. That was the ruling. That was the loss there.

Then another cause of loss is the fraudulent issue of spurious bills by a freight agent. An agent authorized to issue bills of lading conspires with some shipper, and no goods have been received, but he issues the bill and the supposed shipper negotiates it, and it represents nothing.

Now, I understand the Federal courts and the courts of a number of the States hold that that unauthorized fraudulent forgery of the freight agent is the act of the agent only and does not bind the carrier. On the other hand, the New York court of appeals has held that it is an act within the scope of his authority and does bind the carrier. On that point we have covered it in the act, and I admit there is a debatable question whether the carrier should be covered or not.

It is in these matters that this bill of lading is insecure. It is in those matters, and they may seem simple, but they are not. They are serious. There are men in this room to-day, presidents of banks, who, unless there is some better security afforded, will feel unsafe in further loaning money on such security. They will feel that it is not their duty to lend money; that they can not, in justice to their stockholders, continue loaning money on something that has no security at all in its present shape.

But the loaning of money on such security is necessary. It is necessary to the commerce of the country. Suppose all the banks shut down on these bills and did not loan a cent on these bills of lading. It would cripple the commerce of the country. Therefore it seems to me it is within the province of the Federal Congress to regulate this bill of lading to the extent that it will make the bill of lading issued by the carrier a measurably safe security-- not a security to the same extent as a Government bond, because there are legitimate risks which every banker must take-- but a measurably safe security, by imposing certain requirements upon the carrier, requirements which are reasonable, simply requiring him to take up the bill when he surrenders the goods, or suffer the penalty if it is thereafter fraudulently negotiated, and requiring him to issue a form of bill of lading which is so simple that it is no more susceptible of alteration than a negotiable instrument, and requiring him to put the words "order of" in print on that bill, so that it will obviate that form of fraud which has caused numerous losses where the words "order of" are written on the straight bill.

That is the object of this act. It may not be complete. Even since we framed that bill there have been certain things which the committee have considered were unfair, especially section 5, and we have agreed to recommend an amendment by striking it out. But this subject needs regulation, and we present this bill here asking that it be passed by Congress.

Now, the first clause in this measure provides that the bill of lading, to be negotiable, must be drawn to order and have the words "order of" printed thereon. There is nothing harsh in that requirement. It will obviate great frauds to have it printed thereon, the same as the form on the back of the bill. There is nothing harsh in that. Then it goes on to provide the measure of negotiability, its title-conveying force, if I may so speak.

Mr. ESCH. Before you go into that, may I ask you a question? The bill as drawn does not operate within the District of Columbia, does it?

Mr. PATON. It is designed to operate wherever there is interstate commerce.

Mr. ESCH. Would you not have to state specifically "within the District of Columbia?"

Mr. PATON. That was probably an unintentional omission, unless the District of Columbia would come within the designation of a Territory.

Mr. ESCH. It is specified, as a rule.

Mr. PATON. Then the bill proceeds, as I say, to provide for its title-conveying force. It provides—

Such bill shall be negotiable by indorsement and delivery in the same manner as are negotiable instruments for the payment of money, and shall vest the full, complete, and absolute title to the property therein described, and all rights in respect to such property which are or may be contained in such bill of lading in every bona fide holder for value to whom such bill may be transferred, unaffected by equities between the original parties, or any other prior holders.

Mr. RICHARDSON. Allow me to ask you a question right there, will you?

Mr. PATON. Yes, sir.

Mr. RICHARDSON. What do you mean by "unaffected by equities?" Do you mean it should not be governed by any of the infirmities known to the law? For instance, to get my idea clearly before you, if I can: Negotiable paper, bankable paper, as I understand commercial law, is generally in most of the States not subject to any of the infirmities or any of the equities at all between the parties where it started and ended.

Mr. PATON. Yes.

Mr. RICHARDSON. For instance, to illustrate: In some of the States a man who goes as security upon bankable paper and fails to write his name as security, and it falls into the hands of a bank, can not go in there under the statutes of some of the States and say that he was a surety and thereby discharge himself of liability when the notice is given him, for instance, that suit is brought within a certain length of time. That is what you mean by infirmity?

Mr. PATON. That is what I mean.

Mr. RICHARDSON. That is what I understand you to mean. For instance, take it in my State—the State of Alabama. We know more about our own State than we do of other States. The supreme court of Alabama has held, in a case similar to that which I illustrated, that where a man went on bankable paper or negotiable paper and failed to sign his name as security, the court held afterwards, when a suit was brought up between the bank and the security, that he had the right to go into the State courts of Alabama and show by oral proof that he was the security, and that having failed to bring a suit against him according to notice at the first term of court, he was therefore discharged from liability for that bankable or negotiable paper. Now, suppose you put this in this general law, a law made by the Federal Government, by Congress, How would you meet that condition of affairs under the construction of the State laws of Alabama?

Mr. PATON. That would be construed by the general commercial law.

Mr. RICHARDSON. Overriding the State law?

Mr. PATON. The Federal courts would construe this act, and the phrase "unaffected by equities" may be illustrated thus: The carrier who issued this negotiable bill of lading to the shipper may be a creditor of the shipper, and if the bill remained in the shipper's hands he might refuse to deliver the goods, claiming that he had a set-off; but when this gets out into the custom of the world it is free from all claims of the carrier against the original party.

Mr. RICHARDSON. Any equities, conditions, or agreements. That I understand. Now the question I put to you, to find out your opinion about, is this: When this bill provides that such a bill of lading as you are talking about is not liable to any of the equities or infirmities, as you may call them sometimes in law—that is, the agreement between the parties originally—do you not think the law of Alabama would control within its own limits as a State?

Mr. PATON. Not a United States bill of lading. I think not.

Mr. RICHARDSON. I am just getting your views upon it.

Mr. PATON. I think not.

Mr. WANGER. What is the effect of that provision upon stolen goods?

Mr. PATON. I will answer that. Since this act has been printed it has been considered that it would foreclose the title of the owner of stolen goods. If goods were stolen and the thief put them into a railroad, which issued a negotiable bill of lading, which was pledged to a bank for value, the bank would have absolute title to those goods. That result was not intended, and we have drafted an amendment which I was about to suggest. It is a hard thing to do all this at once. It is an important act, and instead of reading "shall vest the full, complete, and absolute title to the property therein described," I propose to amend that language so that it shall read "shall vest all the title to the property therein described, which the first holder of such bill had when he received it." So if the first holder of the bill puts stolen goods into the carrier's hands, the pledgee for value would not be protected as against the property rights of the true owner, and it is not the intention of the banker to foreclose any property rights by this bill. That is an amendment which we propose here to our own bill.

The CHAIRMAN. Please read that again.

Mr. PATON (reads): "Shall vest all the title," striking out the words "full, complete, and absolute," and make it, "shall vest all the title to the property therein described, which the first holder of such bill had when he received it." That is the same as the California statute.

Mr. RUSSELL. Would you not have to eliminate section 5 of the bill to complete that?

Mr. PATON. Yes; it is proposed to eliminate section 5.

Mr. BURKE. I want to ask you three or four practical questions when you reach the stage where it will not interrupt your argument. I am in no hurry about it.

Mr. PATON. Very well. It has also been considered that the word "unaffected," giving the holder the title unaffected between the original parties, would bar the carrier from his lien for freight. Such a result was not intended, and whether it would or not, we had proposed to interline in the same section, after the words "prior holders," the words "but nothing contained in this section shall be construed to deprive the carrier of his right to and lien for freight or

other lawful charges growing out of the carriage or storage of such property."

Mr. RICHARDSON. Do you not think you had better add right there the words, "or other lien recognized by law?" Suppose you had a bale of cotton?

Mr. TOWNSEND. The term "lawful charge" would cover that.

Mr. GAINES. Why not stop with "lawful charge?" Would not that do?

Mr. PATON. I think it would, sir. It is simply to make that so clear that there can be no doubt about it.

Section 1 proceeds—

but any person or corporation to whom such bill is transferred by way of pledge or as collateral security for a debt or for money or other value advanced, shall incur no liability as owner by way of warranty of the genuineness of such bill, or of the quality, quantity, or condition of the property therein described or otherwise.

That clause is put in to protect the security against the laws of certain States.

The CHAIRMAN. Let me ask you, right there, what would be the effect of that? Suppose this person claiming the benefit of that clause were an intermediate holder? Does that destroy or do away with his liability?

Mr. PATON. Not unless he is the pledgee. If he is the pledgee, yes, sir. As a rule, bills of lading do not have successive holders. They are negotiated by the shipper by way of pledge, and the bank holds them until the draft to which they are attached as security is paid and then surrenders them.

Now, it is a rule of the common law that upon the sale of property the seller impliedly warrants the title to that property. There is an implied warranty of it. In certain States it has been held that where a bank acquires a bill of lading as security for a draft it is not a pledgee; it is an owner. It is the buyer of that property, and the owner is the warrantor of the quality and condition of the goods. The result of that is this: A consignment, we will say, of musty wheat is represented by a bill of lading, and is attached to a draft, and the bank discounts that bill. The bank presents the draft to the drawee, to whom the property is to go. The drawee pays the draft; that is, the purchase price of the wheat. He takes it up and then goes to inspect the wheat, and after taking it up finds that instead of its being sound wheat, as contracted for with the shipper, it is musty and inferior. Then he turns around to the bank and says, "You are a warrantor of the quality of that wheat. As owner you warranted the quality of that wheat." In the three States of Alabama, North Carolina, and Mississippi that rule has been adopted, and it has been held that the purchaser who has paid this draft can recover the money paid from the bank to whom he paid it.

Now, that is contrary to all the theory of the law of pledges. A bank which loans on one of these bills of lading as security does not purchase the goods. It takes a pledge of the goods as security. It does not make a buyer's or seller's profit. The man who buys these goods turns them over as a merchant, and makes 10 or 15 or 20 per cent. The bank simply makes interest on the use of its money for a time, and it should not have liability as an owner. In most of the States of this country it is held that there is no such liability. A bill

of lading is simply a security. The bank holds it as a pledge. It is not an owner; but in those three States it is so held, and this clause was inserted to cover that liability and protect that security against the laws of those three States.

Mr. STEVENS. Are you clear that the Congress has a right under the commerce law to control the legislation of those States on that point?

Mr. RICHARDSON. That is what I asked him just now, practically.

Mr. PATON. I believe that Congress under the commerce clause of the Constitution has the power to regulate bills of lading covering interstate commerce, and it has been held by the Supreme Court of the United States away back in 1860, in the case of *Almy v. California*, that a bill of lading is an article of commerce. It is the goods. It is not a mere instrument of commerce, as a check; it is an article of commerce. The State of California imposed a stamp tax on bills of lading which represented gold which was shipped from San Francisco around to New York. On all those bills it imposed a stamp tax. The constitutionality of that law imposing that stamp tax was taken to the Supreme Court of the United States, and it was held to be a violation of the Federal Constitution, which prohibits any State from making or imposing any import tax or duty on imports or exports, without the consent of Congress, except what may be absolutely necessary for executing its inspection laws. And it was held that it would be clearly in violation of the Constitution if the State taxed the goods themselves exported from California, and that the taxing of the bill of lading was the same thing.

Mr. ADAMSON. Is it a fact that the money was receipted for in that case at all?

Mr. PATON. Not money; it might have been potatoes.

Mr. RICHARDSON. The Supreme Court of the United States had held that insurance can not be controlled by the Federal Government.

Mr. PATON. Yes. There is a precedent on that, I think, if you will allow me to cite it. Congress in 1893 enacted the Harter Act, relating to vessels and certain rights and duties connected with the carriage of property, which was approved February 13, 1893, and took effect July 1, 1893. That act prohibited shippers from inserting certain agreements in ocean bills of lading, and provided for the liability of shipowners where the vessel was unseaworthy; and the fourth section of that act provided—

That it shall be the duty of the owner or owners, masters, or agent of any vessel transporting merchandise from or between ports of the United States and foreign ports to issue to shippers of any lawful merchandise a bill of lading or shipping document stating, among other things, the marks necessary for identification, number of packages, or quantity, stating whether it be carrier's or shipper's weight, and apparent order or condition of such merchandise or property delivered to and received by the owner, master, or agent of the vessel for transportation, and such document shall be prima facie evidence of the merchandise therein described.

And for the violation of any of the provisions of the act it provided a penalty.

Now, if Congress has passed an act making it the duty of shippers to issue ocean bills of lading and to put certain things into those bills, and providing a penalty, why is not that a direct precedent for the power of Congress to enact this bill?

Mr. RICHARDSON. Suppose the transaction was between two banks, one at Birmingham, Ala., and one at Mobile, Ala. Do you think this

bill, if enacted as a law of Congress, would control it if the transaction commenced at Birmingham?

Mr. PATON. If it represented goods shipped from Birmingham to Mobile, no, because that is not interstate. This only controls shipments that cross State lines. The other matters are matters for the State to deal with.

Mr. RICHARDSON. You look upon this in a different light from what you look upon insurance or other business?

Mr. PATON. That is not interstate commerce.

Mr. RICHARDSON. I get my policy in New York and I live in Alabama.

Mr. PATON. That is not goods. Commerce is the interchange of merchandise. A bill of lading is merchandise, but an insurance policy is not merchandise.

Mr. ADAMSON. Do you think that the commerce clause of the Constitution, providing for the regulation of commerce and carriers, should be so construed and extended as to compel the common carriers to look out for the financial operations of the consignors and the consignees?

Mr. PATON. I do, sir, as provided by this bill, for this reason: It is a necessity to the commerce of this country that the shipper shall borrow money to make shipments. Otherwise he can not do it.

Mr. STEVENS. He must insure it in a similar way, just as he must borrow money?

Mr. PATON. Yes, but an insurance policy is a contract or guarantee with reference to the property, whereas this is the property itself. There is a difference between an insurance policy and this.

Answering this gentleman's question, I do think that Congress should regulate it, because it is a necessity to the commerce of the country that these shippers should be able to borrow money. They could not conduct the business of the country unless they did borrow money, and it is therefore within the province of Congress to provide means by which they can borrow money and carry on this vast interstate commerce in a way that would be safe to all hands.

The different States have attempted to regulate this subject. They have recognized the necessity of securing the pledgee of these bills of lading, and what do we find? In about fifteen States different statutory provisions, making bills of lading negotiable in the same manner and in all respects the same as the bills of exchange. That is further than this goes. Then in other States we find laws which compel the carrier to take up the bill in that way and provide a criminal penalty if he does not. That is the case in New York. It is "confusion worse confounded" to attempt to regulate it by the laws of forty-five different States.

Mr. MANN. Does not all you say apply to insurance also?

Mr. PATON. I think not.

Mr. MANN. You can not ship all other property by rail and get money on it?

Mr. PATON. No.

Mr. ADAMSON. Does not all you say apply to a limited extent to all men engaged in any kind of business in this country?

Mr. PATON. No, sir.

Mr. ADAMSON. There are uncertainties in all business and risks exist in all cases?

Mr. PATON. Yes, but this is an uncertainty to the continued carrying on of business.

Mr. ADAMSON. All men that have not money want to borrow it.

Mr. PATON. Probably \$3,000,000,000 is loaned by the banks each year. There are banks which can not continue loaning in conformity with their conscience and sense of duty to their stockholders and to their trust unless they have security.

Mr. RICHARDSON. That puts them out of business, does it not?

Mr. PATON. It puts the shipper out of business—the small shipper. The big shipper can borrow money on his own security, but the bank will not trust the small shipper.

Mr. RICHARDSON. It takes business away from the banks?

Mr. STEVENS. I do not think your argument applies in section 1 to lines 4 to 9. As it occurs to me, you admit that the State has the right to effect an obligation, by a statute, to property, or a bill of lading in the way of warranty, as some of the States do. The State has an undoubted right to do it. You do not dispute the fact.

Mr. RICHARDSON. The State of Alabama could impose a tax on commerce between Mobile and Birmingham, and Congress could not interfere. Now Congress has the right under the commerce clause of the Constitution, the moment that bill crosses the State line, to say that that right shall not inhere.

Mr. PATON. Yes. It then comes within interstate commerce and comes into the province of Congress.

Mr. STEVENS. Congress shall state that a negotiable instrument made in a State, with certain obligations indorsed by the State, clearly constitutional within the State, shall be changed by an act of Congress?

Mr. PATON. It is a property right and next to an article of commerce. And when that article of commerce crosses the State line, then it comes within the province of Congress to regulate it.

Mr. TOWNSEND. I understand that the Supreme Court has decided that case—the Supreme Court in the case of *Almy v. California*.

Mr. PATON. Yes. There is a very recent case. In the *Central of Georgia Railway Co. v. Murphy* (196 U. S., 194), decided by the Supreme Court of the United States in January, 1905, a statute of Georgia having application to shipments of freight made to points outside as well as within the State, required the carrier to trace lost freight and inform the shipper how it was lost, damaged, or destroyed. The question was whether the statute, when applied to an interstate shipment of freight, was an interference with or regulation of interstate commerce, and therefore void. The court held it was. It said the effect of such a statute is direct and immediate upon interstate commerce. It directly affects the liability of the carrier of freight destined to points outside of the State, with regard to the transportation of articles of commerce; it prevents a valid contract of exemption from taking effect, except upon a very onerous condition, and it is not of that class of State legislation which has been held to be rather an aid to than a burden upon such commerce. The statute in question prevents the carrier from availing itself of a valid contract, unless such carrier comply with the provisions of the statute by obtaining information which it has no means of compelling another carrier to give, and yet, if the information is not obtained, the carrier is to be held liable for the negligence of another carrier over whose conduct it has no control. This is not a reasonable regulation in aid of interstate commerce, but a direct and immediate burden upon it.

Mr. RICHARDSON. You do not apply that decision to the principle under discussion here?

Mr. PATON. I cited that for this purpose, to show that that was lawful as long as it applied to shipments within the State.

Mr. ADAMSON. In order to be in line with your argument, Congress ought to adopt that as a part of the interstate commerce act. All the matter there was with that was that it was not an act of Congress of the United States, but an act of the State of Georgia.

Mr. PATON. That is it, but that is an unreasonable burden on the carrier.

Mr. ADAMSON. If that is so, there have been a lot of unreasonable burdens imposed upon people.

Mr. PATON. I cited that simply on the general proposition that in this subject of bills of lading, which represent interests in shipments, it is very doubtful whether the States have the power to regulate them, and there should be some regulation, and that it is within the province of Congress to do it.

Mr. STEVENS. You do not maintain that that Central Georgia case would control the principle of those lines that I read to you?

Mr. PATON. No, sir; we digressed there a little.

Mr. MANN. What do you mean by saying that in lines 9 and 10 on page 1—

Such bill shall be negotiable by indorsement and delivery in the same manner as are negotiable instruments for the payment of money?

Mr. PATON. I mean exactly what the Supreme Court of the United States means in the case of *Shaw v. Railroad Company*, in 101 U. S., 557. In that case a statute was involved, as to bills of lading, which provided that they should be negotiable in the same manner as bills of exchange for the payment of money.

Mr. MANN. What did the courts hold?

Mr. PATON. It was urged in that case that that gave the holder the same right in all respects as the holder of a bill of exchange. It gave the right to the property which was stolen as against the true owner. But the court held that the statute could not be construed as altering the common law any further than was expressly stated in its words, and it construed those words as meaning that a bill shall be negotiable in the same manner by indorsement and delivery, so that the title shall be transferred in the same manner. That is, you turn over the title by indorsing it over; but that it did not carry the full effect of a negotiable instrument; that it was simply the regulation of the manner of transfer, but it was not in all respects a negotiable instrument; and if the legislature had so intended, they would have said so in express words.

Mr. MANN. Is the manner of negotiating a note exactly the same in all the States?

Mr. PATON. I think so. The uniform negotiable-instruments law has now been enacted in thirty of the States.

Mr. MANN. Not in all of them?

Mr. PATON. No; but the common law governs in the others.

Mr. MANN. Would this mean according to the common law or according to the statutory law of that State, or the statutory law of the State where the bill of lading was issued?

Mr. PATON. That would mean according to the commercial law of the United States, as construed by the Supreme Court of the United States.

Mr. MANN. The Supreme Court, in its construction, construes the State law, and of course followed the State construction of the negotiability of a note. Now we have no Federal law on that subject except—

Mr. PATON. You have a negotiable-instrument law in the District of Columbia?

Mr. MANN. Yes; but that does not apply. We have no Federal law on that, except as the courts may follow the common law. Would it not be better, if you put anything in here, to define what you mean—what you have there advanced, what is meant by one particular State law? I have read the decisions.

Mr. PATON. That phrase is defined as having a certain meaning by the Supreme Court of the United States.

Mr. MANN. As applied by a State law in a State which had a special law governing the negotiability of instruments.

Mr. PATON. In that respect the State law was, I believe, no different from the general commercial law. It is uniform. All negotiable instruments are transferable by indorsements, and then they go by delivery—whether by State law or common law, it is the same. That is settled.

Now as to the second section of this act—may I proceed?

The CHAIRMAN. Go ahead.

Mr. PATON. The bankers will want to give the practical side of this question. I am simply attempting to show what the bill covers. The second section provides—

That the property described in a negotiable bill of lading shall be delivered only upon surrender of such bill properly indorsed, and the bill shall thereupon be canceled, except in case of partial delivery, when statement of the same may be indorsed upon said bill. An outstanding unsurrendered negotiable bill of lading shall continue to be negotiable, notwithstanding the property therein described has been delivered to the legal owner of such bill so far as to vest in any subsequent bona fide holder without notice the right to require from the carrier the full value of the property therein described.

Mr. ADAMSON. Do you understand under existing law that when an authorized agent of a carrier issues a bill of lading reciting that the goods shall be held and not delivered except upon the surrender of that paper, whether in the hands of the original party or assignee—do you understand that the original party can give it to you and the railroad escape liability?

Mr. PATON. I can cite the decision on that of the New York court of appeals.

Mr. WANGER. Was not that an altered bill of lading?

Mr. PATON. No, sir. I explained the reason for that. That property was delivered to the legal owner. Therefore the bill had no validity. It was used up. It was a spent bill.

Mr. ADAMSON. Did that bill recite the terms I mentioned, that it should not be delivered except upon surrender of the bill of lading?

Mr. PATON. Yes; and the court held that I should deliver the property to you only when you gave me that bill. Now, I have given you the property. I have given it to the legal owner. I do not take up the bill.

Mr. ADAMSON. Has that same court held that when I give you my note and pay it off before it is due, and you make off with it, it must be paid again?

Mr. PATON. No; it is not in due course, sir—

Mr. ADAMSON. The other is not due, either, and does not mature until you present it—the bill of lading; that is, the contract that is put in it.

Mr. PATON. I can not go against the settled decisions of the courts.

Mr. MANN. If it were a note and it was paid and due—

Mr. PATON. Then it would be the same rule.

Mr. MANN. And then somebody negotiated it, it would not be good?

Mr. PATON. No, sir.

Mr. MANN. Do you propose, if it is a bill of lading, it shall be good for three years, or indefinitely?

Mr. PATON. Yes.

Mr. MANN. You want to make it good forever?

Mr. PATON. No, sir. There is a statute of limitations in most of the States.

Mr. MANN. There is no statute of limitations here. The State law would have no control of this. You say "forever" in the bill.

Mr. ADAMSON. I misunderstood you. You say if the note was paid before maturity and held until maturity, it could be collected again?

Mr. PATON. Yes.

Mr. ADAMSON. A great many notes are written payable in advance. In the agricultural districts they say, "On a certain day we will pay to A B, on order or bearer, so much cotton, at such and such a date." In what respect does that differ from the railroad's contract that they will deliver so much freight to the holder of this receipt?

Mr. PATON. It is in theory about the same thing, I suppose. But I suppose those contracts do not enter into commerce in the way these bills of lading do.

Mr. ADAMSON. Why not?

Mr. CLAYTON. Because they are not used in the transportation of the property of the country.

Mr. ADAMSON. I am not speaking of the use you make of the property or how you handle it; but the language of the obligation certainly controls the title.

Mr. PATON. Why is it unfair, when a railroad company says, "We will take up this bill and deliver the property," to hold it liable if it does not do that? Why is it unfair to hold the carrier to that liability?

Mr. ADAMSON. I do not think it is unfair to hold them to anything they agree to, and I think they are held to it already now.

Mr. PATON. You can not loan money on these if they are no good at all. Even in the case of a Chinese laundry ticket, the Chinaman says, "No ticket, no shirtee." You can not get your shirt out of the laundry unless you give up your ticket.

Mr. ADAMSON. You want to make it easier for the banks to do this certain kind of business and exempt them from the uncertainties that other business men are subject to?

Mr. PATON. I do not think so, sir. I think it is a necessary security.

Mr. TOWNSEND. The railroads issue these bills, in the first place, with the idea that they are to be negotiated for these loans?

Mr. PATON. That is the idea.

Mr. TOWNSEND. And they now state on the back that they will hold them until the bill of lading is surrendered?

Mr. PATON. Yes, sir.

Mr. TOWNSEND. And now you have discovered that there are cases which, on some technical grounds, have resulted in loss to the banks?

Mr. PATON. Yes.

Mr. TOWNSEND. And you are asking that that bill of lading shall by law be made to mean what it says?

Mr. PATON. That is exactly it.

Mr. TOWNSEND. Do any of the railroads object to this thing being carried out as you intend it?

Mr. PATON. I believe not. Some may object. I know some do not.

Mr. TOWNSEND. Do any of them deny that they are issuing these bills of lading for the express purpose set forth in this bill?

Mr. PATON. No. That is the theory and idea of the contract.

Mr. RYAN. Do you designate the form of the bill of lading, or do you leave that to the railroads?

Mr. PATON. This bill designates the form, as you will see on the last page.

Mr. RICHARDSON. You are trying to make the railroads comply with the promise that they make in that bill of lading now? They make the promise, and you are trying to make a law to make them comply with that promise?

Mr. PATON. Yes; to make that promise mean something.

Mr. RICHARDSON. I understand the purport of this bill is to make them do what they promise. I understand what you are after. Why can you not make them now do that?

Mr. PATON. It strikes me they should be liable, but the courts have held they are not.

Mr. RICHARDSON. I do not see how a railroad or common carrier can—

Mr. PATON. Has not that spent-bill proposition been so decided in New Jersey? I think it is a very bad law.

Mr. MANN. Is not the way they get around it by making the bill nonnegotiable? Does not that settle the whole business?

Mr. PATON. Yes. The banks will not loan on them, and that will cripple the commerce of the country.

Mr. MANN. Are they not all marked nonnegotiable?

Mr. PATON. Yes; but there is at the same time a clause in it which makes it negotiable.

Mr. BURKE. Would it not be possible to ascertain whether the goods described in the bill of lading have been delivered or not?

Mr. PATON. Mr. Person, will you be good enough to answer that question?

Mr. BURKE. I have several practical questions that I want to ask you.

Mr. WANGER. Is there anything in this bill that applies to non-negotiable bills of lading?

Mr. PATON. In section 7 the common carrier is prohibited from inserting "nonnegotiable" in any bill of lading or from nullifying its provisions by any inconsistent provisions.

Mr. RUSSELL. Is not this the situation, that these bills of lading, in the absence of an agreement between the parties, would not be negotiable unless there was a statutory regulation making them negotiable?

Mr. PATON. Yes.

Mr. RUSSELL. You want to make it apply to interstate transactions?

Mr. PATON. Yes; you can not make it negotiable except by contract.

Mr. ADAMSON. Do you not want to make them enter into a contract which they do not want to make?

Mr. PATON. The proposition is to force the carriers to issue a fairly safe and negotiable security.

Mr. ADAMSON. Do you think it is a good policy or good legislation in this country for Congress to force people to make contracts that they do not want to make?

Mr. PATON. In the Harter Act Congress forced them to make a contract.

Mr. ADAMSON. They may prohibit them from putting certain things in places and make it illegal to do such things.

Mr. MANN. May I ask you your opinion whether the passage of this bill would not transfer to the Federal courts all litigation concerning bills of lading?

Mr. PATON. I would think so, offhand. It is the construction of a Federal statute. In the national-bank act—I know there are actions of usury brought under the national-bank act in the State courts.

Mr. BARTLETT. That is under special arrangement. The language is, "Any right claimed by reason of the Constitution of the United States or any law passed in pursuance thereof." This act would pass, if passed at all, in pursuance of the Constitution of the United States, and any right claimed under it would go to the United States circuit courts.

Mr. ADAMSON. Do you not think it would result to some extent in maintaining the present condition of affairs financially in the country and prevent the coming of the day when the vast products of the West and South would be moved without having to borrow money from the Eastern banks? [Laughter.]

Mr. PATON. That is rather a question of political economy.

Mr. BARTLETT. So far as the South is concerned, that condition has been here for four or five years.

Mr. ADAMSON. I think that is the African citizen in the wood pile, myself. [Laughter.]

Mr. TOWNSEND. Are you seeking to force the railroads to make contracts?

Mr. PATON. I understand that at common law it is the obligation and duty of the common carrier not only to receive the goods for carriage, but also to issue a bill of lading, to make a contract, to issue a receipt; and the purpose of this is simply that you shall make that receipt have a certain effect, to mean what they say. They are under obligations to issue a certificate.

Mr. BARTLETT. You do not mean there is any obligation under the common law to require a carrier to issue a bill of lading?

Mr. PATON. I think the long-standing custom has crystallized into common law.

Mr. RICHARDSON. If you had a law to make them comply with it, you would make them issue. You would not want an additional law if you had some way to make them comply with the promise they have already made?

Mr. PATON. That is it exactly.

Mr. RUSSELL. You want to make them comply with certain requirements that they now do not comply with in certain instances?

Mr. PATON. Yes.

Mr. STEVENS. Before you leave section 2 I would like to ask you some questions, particularly as to the last sentence of section 2—its construction in connection with the amendment you made to section 1, by which the bill shall vest the title which the first holder has. Now, out in our northwestern country, supposing an elevator man issues an elevator receipt, an ordinary receipt for grain stored, and then he puts the grain in the car and gets a bill of lading to himself, and then he negotiates that bill of lading: under section 2 the title to that, to him, would not be complete when he obtained his original bill of lading. Now, if he received the property that bill of lading would be outstanding if it were not surrenderable, and the carrier would be responsible, would he not, to the owner of that grain?

Mr. PATON. Until he took it up; yes.

Mr. STEVENS. That outstanding bill of lading could be negotiated, although the grain was actually owned by somebody else?

Mr. PATON. No; in that event it would not carry any title to the pledgee.

Mr. STEVENS. Would it not under the last two or three lines under that section 2? That is what I wanted to find out—your construction—although you have made that amendment in section 1. Will you not have to amend that section 2 also to conform to your amendment to section 1?

Mr. PATON. It should be amended in that particular.

Mr. STEVENS. That is what I wanted to find out.

Mr. PATON. Yes, sir. Section 3 provides—

That every negotiable bill of lading issued by a carrier, or by the agent of a carrier, authorized to issue bills of lading in the hands of a bona fide holder for value shall be conclusive evidence as against the issuing carrier that the goods therein described have been received, notwithstanding there has been no delivery or only a partial delivery to such carrier of such goods.

That section is meant to cover that form of fraud where the freight agent issues a bill of lading fraudulently where there have been no goods received from the shipper.

Mr. BURKE. What about that proposition asked by Judge Russell this morning?

Mr. MANN. What about cotton and cotton waste? Is it necessary for the carrier to open the cotton bale to see what it contains?

Mr. PATON. I would suggest adding, to make that clear, that "this section is not to be construed as making the carrier the warrantor of the contents of the packages described."

Mr. WANGER. That it does not make him the warrantor?

Mr. PATON. No. That has been so held with regard to warehouse receipts. There is a case where a thousand barrels of Portland cement, or a thousand barrels which, it was supposed, contained Portland cement, but which did not amount to anything and which was worthless, were put into a warehouse and a negotiable warehouse receipt issued, and the holder of that negotiated it to the bank for value, and the bank found out that there was nothing to the cement.

Mr. ADAMSON. Do you think the railroad could be heard to vindicate its own rascality in a case like that? Do you not think under all law it could be collected against the railroad?

Mr. PATON. I understand the railroad does not know anything about it in that case. That case went up to the court of appeals. The bank

says to the warehouse, "We hold your warehouse receipt for a thousand barrels of Portland cement." And the court held that the warehouse did not warrant the contents of the barrel, that it simply warranted the contents to the extent that these barrels had the appearance of containing Portland cement. They did not guarantee that there was Portland cement in there.

Mr. RUSSELL. Do you have a statute in that case covering it, like this section 3 here?

Mr. PATON. No, sir; for that reason we are adding it here as a section.

Mr. ADAMSON. If the carrier gave the receipt and the goods were not there, in such a case—

Mr. PATON. This provides that the carrier shall be responsible.

Mr. ADAMSON. You do not claim under existing law that the carrier could be heard to set up his own fraud?

Mr. PATON. That was the fraud of his agent.

Mr. ADAMSON. What he does by the agent is done by himself.

Mr. PATON. That is a matter of conflicting law, or conflicting decision. In some States it is held that the act is within the authority of the agent, and that it binds the carrier where he issues a spurious bill with no goods behind it. In other States it is held that it is beyond the scope of the authority of the agent; and it was to make the agent liable that this section was put in, but it is not to make him warrant a thousand barrels of mud to be a thousand barrels of Portland cement.

Mr. RICHARDSON. This question, as I understand it, is used as an illustration, to which Brother Mann referred, about a hundred barrels of cotton being shipped and a bill of lading attached, with the draft representing that there were a hundred bales of cotton; and it went to New York and it turned out when examined there that it was short 20 bales of cotton, and he said that the trouble was that the banker would be made responsible. Do you not think he ought to be? Say, for instance, a man ships from my town, Huntsville, Ala., a hundred bales of cotton with a bill of lading attached and a draft on New York, and he states that there are a hundred bales of cotton, and the banker in New York is misled by it, and instead of there being a hundred there may be 90 or 95, or some other quantity. Ought not the banker to be made responsible, to pay the difference? Ought not he to be made responsible? They have got the warehouse man under bond. He gives him the correct weight.

Mr. PATON. If he has the opportunity of inspection; but the pledge is not always in the same town.

Mr. RICHARDSON. He conforms to the usual, ordinary, customary practices of the country, and he ought to be made liable.

Mr. PATON. Of course that is a debatable question.

Mr. RICHARDSON. That is the principle that your colleague was going on. I think that banker got just what he deserved.

Mr. PATON. In another town a banker, for example, could not travel to that town to find out whether that were a hundred bales or 90 bales.

Mr. TOWNSEND. The bank does not issue that?

Mr. PATON. No; the carrier issues it.

Mr. TOWNSEND. You are not seeking to make the carrier the guarantor for the quantity or quality?

Mr. PATON. For the quality, but not the quantity: for the quantity of sealed packages.

Mr. STEVENS. If the bill described Portland cement, it would mean Portland cement?

Mr. PATON. Not if there is no such intention.

Mr. STEVENS. It says it shall be conclusive evidence against the carrier.

Mr. PATON. We add to that "This section is not to be construed as making the carrier the warrantor of the contents of the packages."

Mr. STEVENS. What is the use of putting the word "conclusive" in there?

Mr. PATON. That is when there is no property at all delivered.

Mr. ADAMSON. Under what authority do you hold that the duly authorized agent of the railroad in business is less able to bind his company than the cashier of a bank is able to bind his company? Is it not the same under existing law?

Mr. PATON. No, sir; it is not.

Mr. MANN. Who loads the cotton—the railroad or the owner?

Mr. PATON. That is not a banking question.

Mr. MANN. As a matter of fact, the owner loads it on the car.

Mr. BARTLETT. Oh, no.

Mr. MANN. Where a man ships a carload of anything else, he does. He takes the cotton or other article and puts it in the car, and he produces a statement to the agent of the railroad company of what he puts in the car. He has a minimum and a maximum of weight. Do you propose that the railway agent shall stand at the door of the car and watch everything that goes in?

Mr. PATON. It seems to me, as a lawyer, that it is very loose practice for a man to sign a paper saying he has received something that he has not received.

Mr. MANN. It is his interest to get the freight on it. It sometimes happens that a man takes out \$5,000 of insurance on a house worth \$1,000, and the house burns down and he gets the insurance; but it is not often done.

Mr. ADAMSON. I have yet to hear of a case where a railroad does not find out what it is hauling.

Mr. MANN. In many cases they do not pay any attention to it.

Mr. PATON. Section 4 of this act provides for the subject of alteration. It says:

That any conventional alteration, addition, or erasure in or to a negotiable bill of lading which shall be made without the special notation thereon of the agent of the carrier issuing such bill shall be void, and any unauthorized or fraudulent alteration, addition, or erasure in or to such bill of lading shall also be void, and in any of the above cases such bill of lading shall remain wholly unaffected.

Mr. STEVENS. On that section 3, do you not think that there is some inconsistency in there in connection with that language in section 1 which I referred to in connection with section 2? I refer to that language at the bottom of page 1 and the language at the bottom of page 2. The title of the first holder is carried by the bill. Now, here you provide in section 3 that every negotiable bill of lading issued by a carrier or his agent shall be conclusive evidence as against the issuing carrier that the goods therein described have been received. The bill describes not only the goods, but the packages, and what

goods are in them, and it describes the owner, and it is conclusive evidence against the carrier that that is the condition.

Mr. BARTLETT. Speaking about cotton, Mr. Stevens, cotton is shipped by weights. It has certain marks on it.

Mr. STEVENS. No; I am speaking of goods like cement, in which there are certain packages. It seems to me you have an inconsistency here.

Mr. PATON. I propose to amend that by adding that the section shall not be so construed.

The CHAIRMAN. What is that language that you propose?

Mr. RUSSELL. He suggested this language:

Provided, That this section shall not be construed to make the carrier a warrantor.

He suggests this:

Provided, That in case this carrier acted in good faith in issuing the bill of lading, then its liability shall be limited to what the actual value of such property is.

Mr. MANN. The amendment read by Judge Russell would not cover the case where a man fraudulently imposed on the railroad company.

Mr. RUSSELL. No; it was not designed to.

Mr. MANN. Suppose a man, for fraudulent purposes, shipped cotton waste instead of cotton. It is perfectly plain that the railroad, which has no option in the matter at all, ought not to be held to a more strict liability than the man who has made the deal or be made more liable in the losses.

The CHAIRMAN. It would be at that section that the proviso should come in that the gentleman has suggested. What would be the value of section 3 with the proviso that the section shall not be construed to make the carrier a guarantor of the quality or quantity of the property? What is there left after that is inserted?

Mr. PATON. If the agent of the carrier sits down and signs a bill of lading for a hundred or a thousand barrels of potatoes and gives it to the shipper, and the barrels of potatoes exist only in his imagination, and the shipper negotiates that bill for value, that section would bind the carrier to the value of that property.

The CHAIRMAN. Not with this language inserted there—

Provided, That this section shall not be construed to make the carrier the guarantor of the quality or quantity of the property.

It seems to me it is going up the hill and then down again. [Laughter.]

Mr. PATON. I would like to say as to that that this subject was only talked over last night, and there has hardly been time to technically frame a correct amendment. The idea was there. Judge Russell suggests this, which to me seems better:

Provided, That in case the carrier acts in good faith in issuing the bill of lading, then its liability shall be limited to what is the real value of such property when received.

That makes the distinction between bills in good faith and fraudulent bills.

Mr. ADAMSON. What will you do if it is not in good faith? Double the penalty?

Mr. PATON. Make them give the value of it as described.

The CHAIRMAN. If the agent of the carrier is acting in good faith, then that will open up all the equities between the parties; but if the carrier is the victim of a dishonest agent, then that closes all inquiry as to these equities.

Mr. PATON. It makes the carrier liable.

The CHAIRMAN. The rightfulness of the law would hinge, then, not on the question of the ignorance or inefficiency of the agent, but on the fraud of the agent?

Mr. PATON. Yes.

Mr. MANN. Take the case of shipping flour. You referred to cotton a while ago. The millers usually load their own cars with barrels of flour. The agent signs a bill of lading as a matter pro forma. Do you propose to have the agent count the barrels of flour, or else accuse him of not being in good faith?

Mr. PATON. I should think the agent would count that flour and see what he is issuing.

Mr. MANN. It would certainly revolutionize the methods of loading freight on cars in this country. Here is a train load of flour. I suppose the mills in Minneapolis turn out many train loads of flour every day, loaded upon the sidings.

Mr. PATON. I think any other way would be loose business. That is what bankers say. It should be checked up.

Section 4, as I said, is the alteration clause. It provides—

That any conventional alteration, addition, or erasure in or to a negotiable bill of lading which shall be made without the special notation thereon of the agent of the carrier issuing such bill shall be void, and any unauthorized or fraudulent alteration, addition, or erasure in or to such bill of lading shall also be void, and in any of the above cases such bill of lading shall remain wholly unaffected.

The object of that clause is to make the bill good according to its original tenor. That covers the case of fraudulent alteration, or alterations by agreement, which have not been noted on the bill of lading, and the object is to make the bill good for its original tenor.

Mr. MANN. You see what I mean by that. A great many of the bills of lading are prepared by the shipper himself—that is, the written part is written out by him and signed by the agent. Your proposition is that if there is any alteration in that bill, instead of destroying it, to have the agent of the railroad company make a notation on the bill in his own handwriting?

Mr. PATON. Yes.

Mr. MANN. How would a banker know that it was his handwriting?

Mr. PATON. By the signature on the bill.

Mr. MANN. Suppose I had a bill of lading and I made the annotation there and signed it: How would the banker know who signed it?

Mr. PATON. It is a risk that the bank must take.

Mr. MANN. What good does it do? The purpose of this is to prevent fraud, and yet you leave it wide open to the man who wants to commit fraud.

Mr. TOWNSEND. Here is the situation. Mr. Mann, that they are seeking to guard against: These bills of lading have annotations upon them, written in pencil and signed by anybody. Now, the shipper will write an annotation in pencil on the bill of lading when he

would not, under this bill, write that annotation and sign an agent's name to it. Their proposition is that the writing must be done by the agent authorized to make that signature.

Mr. MANN. Here is a man who wants to commit fraud, for instance, and he has a bill of lading. What is to prevent him from making an annotation on there?

Mr. TOWNSEND. The bank takes that risk. He is not asking to be relieved from that.

Mr. MANN. What possible benefit or protection would it be against a man who wanted to commit a fraud when you leave it open for him to do that?

Mr. ADAMSON. The local bank must take its risk.

Mr. PATON. This section says:

That any conventional alteration, addition, or erasure in or to a negotiable bill of lading which shall be made without the special notation thereon of the agent of the carrier issuing such bill shall be void.

Mr. MANN. And that is a dead letter. You think you will revivify it by putting it into law, yet it seems to me you will not be a particle better off. I want to help you to cover it.

The CHAIRMAN. Will you define the word "conventional," in line 3 of page 3?

Mr. PATON. By agreement between the parties, as distinguished from a fraudulent alteration; by agreement.

Now, going on to section 5—

Mr. BARTLETT. When you get through with that I would like to ask the witness one or two questions, Mr. Chairman. [To the witness:] The carriage of freight, whatever it may be, is compulsory upon all carriers, is it not?

Mr. PATON. So I understand it.

Mr. BARTLETT. When delivered to the carrier, whatever the freight may be, the carrier is compelled to receive it and to carry it according to the direction of the shipper from one destination to another, provided the shipper pays, or agrees to pay at one end or the other, the freight charges. In my own State of Georgia it is made a misdemeanor for a carrier to refuse to give a receipt for the goods and delivery. He must not only carry, but he must give a receipt of the character of goods and their weight, and so forth.

The present law makes the carrier, whether he contracts or not, carry as a matter of law, and now you want to make it a fact by law—by a mere simple receipt of the carrier to the effect that he has received a certain amount of goods, describing them—that the bill shall be negotiable by delivery rather than by enforcement; and not only that, but you want to make the carrier liable in case the shipper and clerk or agent at the receiving depot of the carrier shall combine together for the purpose of fraud or depriving somebody—a bank, if you please—of its rights, and you want to make that fraud rest altogether upon the carrier.

Simply because the shipper and the carrier's agent enter into a false agreement or false statement to the effect that the carrier has received certain shipments when it has not, you propose to make the carrier liable for the full amount of the alleged goods. In other words, you want to shift from the shoulders of the banks, or the persons who lend upon the receipts, the responsibility or duty of requir-

ing the fulfillment of the contract, whether it was a bona fide transaction or not. You want to relieve or shift that duty from the shoulders of everybody else and place the burden upon the railroads alone. That seems to be the purpose of the bill.

Mr. PATON. As to making the carrier liable for a fraudulent bill of lading, that is something undertaken by the carrier himself in clause 9 of the present form of bill of lading, wherein he agrees to take up the bill of lading when he delivers the goods. This act only wants to make that agreement effective.

As to making the carrier liable for a fraudulent bill of lading made out by his freight agent, that is a liability that is now provided by law in many States.

Mr. BARTLETT. You make him liable also for the fraudulent conduct of the men to whom the fraudulent agent delivers a fraudulent bill of lading. You want to make him liable for the act of both people.

Mr. PATON. If he colludes, then he is guilty of collusion. I think it would be a wise thing to add a section making it a criminal offense and providing a penalty, that any agent of a carrier who fraudulently issues a fraudulent bill of lading for which the whole or any part has not been received at the time of issue, or any agent who receives such bill fraudulently, which issues or surrenders such bill for purposes of negotiation, is guilty of misdemeanor and is punishable by fine of not less than \$5,000, or imprisonment for a term, say, of five years, or both. I would provide also that any person, not being the owner or the authorized agent of the property, who delivers such property to the carrier and receives therefor a negotiable bill of lading should be deemed guilty of a misdemeanor, punishable by a fine of \$5,000 or imprisonment for five years, or both.

Mr. BARTLETT. Do you not think those acts of deceit and fraud therein described are taken care of and can be taken care of by the various States?

Mr. ADAMSON. I was going to ask you do you believe there is a single State of the Union where you can not do that now without legislation here?

The CHAIRMAN. This is certainly a very important matter, and deals with very large interests; and evidently, from the amendments that have been suggested by yourself and others, the bill as the Bankers' Association prepared it is somewhat immature in its character. I was going to suggest to you, if it would suit your convenience and you would prefer it, that the committee take a recess now, until to-morrow morning at half past 10 o'clock, in order to give you an opportunity to put in such perfect form as you choose your ideas with regard to this desired legislation. I simply make this suggestion to you. Or you can go on offering these amendments from time to time, or you can take this other course: just as you please.

Mr. TOWNSEND. Yes; and make enough copies of it so that we can all have them to-morrow morning.

The CHAIRMAN. I make that suggestion to you. I have no doubt the committee will be glad to meet you to-morrow morning at half past 10.

Mr. TOWNSEND. If you have not anything important to do which will require you to adjourn now, could you not call upon others outside the city here, who have to return home this evening, and ask them as to their ideas with respect to the necessity of this legislation?

The CHAIRMAN. Very well.

Mr. TOWNSEND. Then I will introduce Mr. Evans.

The CHAIRMAN. We will be very glad to hear you, if you please, Mr. Evans.

STATEMENT OF MR. C. M. EVANS, OF WILMINGTON, N. C., PRESIDENT OF THE NORTH CAROLINA BANKERS' ASSOCIATION.

Mr. TOWNSEND. First give your full name and address and business, and so on.

Mr. EVANS. I am cashier of the Southern National Bank, of Wilmington, and president of the North Carolina Bankers' Association.

The CHAIRMAN. Proceed now, if you please. Take your own course in discussing the necessity for this legislation.

Mr. EVANS. First, I will say, sir, that in an experience of about twenty-two years in the banking business in our State I have had thousands of transactions in which bills of lading have been the basis of security. I have known of instances, in my own experience and in the experience of bankers in the same neighborhood and in the same State, in which the banks have suffered loss by reason of the complex form or agreement which we find in the average bills of lading. I know that in lending money on cotton, as we do principally on these bills of lading, we have come to look upon a bill of lading as affording the same measure of security that a bonded-warehouse receipt affords, and we think it should afford the same. Yet it does not, and there is this difference: A bonded-warehouse receipt undertakes to deliver to the holder of that receipt, or to the party to whom the receipt is indorsed, a certain number of bales of cotton of a certain weight, of a certain grade, and you can go and get that cotton, and that warehouse receipt is a negotiable instrument which the bankers take very readily and lend their money upon with impunity.

Now, then, when it comes to a bill of lading, if the bonded-warehouse companies can undertake to approve and check these bills of cotton as received, and give their negotiable receipts, from which they can not evade payment, we think that the railroad companies, expecting these bills to be treated as a similar security, should do as much. They should check the cotton. The gentleman [Mr. Mann] says the railroad companies do not check them. I worked with a railroad company myself, and I had that particular work to do: and I have never known a bill of lading to be placed against a carload of goods where the agent or clerk of the company was not right there. The man who owns the cotton may load it, or the man who owns the flour may load it; but standing right there is the clerk of the corporation or railroad company, whose duty it is to check every article as it is placed in that car.

Now, then, as the railroad company does check and prove the receipt of these articles, we claim that the holder of their receipts should have the same measure of protection as he has when he holds a bonded-warehouse receipt, where we do such business on these bills of lading as we do on the bonded-warehouse receipts; and we never have a question about warehouse receipts, but we do have respecting these bills of lading.

Mr. TOWNSEND. Could not the banks get along anyway without doing business with these bills of lading?

Mr. EVANS. Of course they could.

The CHAIRMAN. Is there any necessity for the railroad company to issue any other paper than that one which merely recites that it has received so many bales of cotton from Mr. A. B.?

Mr. EVANS. There is none, sir, except to provide—

The CHAIRMAN. The law does all the balance?

Mr. EVANS. That is right, sir—that is, now, if you want to make a negotiable bill of that receipt.

The CHAIRMAN. No; I am simply talking about the obligation of the carrier created by statute. There is nothing more required of him than to give that receipt?

Mr. EVANS. That is all.

The CHAIRMAN. Then the law imposes upon him the duty. It is not a contract; it is a duty to deliver that property?

Mr. EVANS. Exactly.

The CHAIRMAN. Now, this bill proposes to change entirely that relation by compelling him to give an instrument that will have the form and negotiable qualities of a promissory note or a draft, for the convenience of the bankers of the country?

Mr. EVANS. Not at all, sir.

The CHAIRMAN. In order that they may more safely transact their business, which is completely independent of and differing from that of the carrier?

Mr. EVANS. No, sir. When you stated it you asked, Is it necessary under the law for the railroad company to do more than issue the simple plain receipt for the goods? I say it is not necessary, but they do not issue those receipts merely. They do not stop there. They issue a bill of lading, in which they engage to deliver the goods to the order of the party. If the shipment is to John Jones & Co., of New York, they will write a bill of lading, "or order, John Jones & Co., of New York," and they will say specifically these goods will not be delivered until that bill is surrendered.

Now, I say, our association, our bankers, desire this legislation, and not from a selfish view point at all, sir; but in order to promote trade, because in our own section, in the South, the people would be in an embarrassing position in handling the vast cotton crop unless the brokers and agents and men of limited means had some way of facilitating the handling of their goods and of putting them into the hands of a third party to hold for the interests of the consignor. When they fail to do that, when they give us a bill of lading and say they will not deliver these goods until the bill is surrendered they leave a way open by which an honest trader may go to wreck and ruin, and we have those instances frequently.

A case was cited a few minutes ago—at least it was brought to my mind by the citation of another case—where a man representing himself to be the purchaser of scrap iron in a city of our State engaged to open business. He was fairly well introduced, and he stated to the banks that he would open an account with them, and he deposited with the banks bills of lading, and thus obtained credit from them. He came into the bank, with which I was connected, and brought in a bill of lading for a carload of this scrap iron, and desired to obtain the money. Fortunately we placed his instrument on the collection book, which he readily consented to, but he went into another bank and placed the same bills, or at least others like them, to the extent

of \$40,000, or something like that, and it turned out that there were no goods shipped.

The bank had to lose the money, and properly lose it, because he had merely forged the bill of lading, and the bank had taken it. But when their own authorized agent undertakes the shipment and delivery of these several articles, and they are placed in the hands and keeping of the railroad company, and the company gives a bill in which they engage not to deliver those goods until that bill is returned, we think that Congress should require that they do that thing; that they be forced to deliver those goods or the value of those goods.

Mr. BURKE. Do you not think that they are required to do so now?

Mr. EVANS. No, sir.

Mr. MANN. When the cotton was loaded, it would be shipped as a carload of cotton, not as so many bales?

Mr. EVANS. It would be shipped as a hundred bales more often, with the actual mark and the weight always indicated.

Mr. MANN. Does that say whether it is sea-island cotton or short-staple cotton?

Mr. EVANS. No, sir.

Mr. MANN. There is a great difference in the value?

Mr. EVANS. Yes.

Mr. MANN. Which would the railroad company be responsible for?

Mr. EVANS. For the load of cotton bearing the marks indicated on the bill of lading.

Mr. MANN. Supposing there was no cotton? You are trying to enact legislation to cover a case where the facts are not the facts, but where imagination takes the place of facts. Which would the railroad company be responsible for? Does it have to guarantee the grade of cotton?

Mr. EVANS. Not at all, sir. We propose an amendment there to relieve them of that.

Mr. MANN. Take the case of a shipment of wheat. It makes a difference whether it is No. 1 hard winter wheat or rejected spring wheat.

Mr. EVANS. That is settled at the elevator.

Mr. MANN. The railroad company has nothing to do with the elevator.

Mr. EVANS. Yes. They know what grade of wheat they take from the elevator—what number it is.

Mr. STEVENS. The receipt shows?

Mr. EVANS. Yes.

Mr. BURKE. In the scrap iron case that you mentioned—

Mr. BURKE. The bill of lading may show in some cases, but there would be cases where it would not show?

Mr. EVANS. Yes. There is such diversity between the bills of lading that we want some uniformity.

Mr. MANN. Would the railroad company be required to show whether it was hard winter wheat No. 1 or spring wheat rejected?

Mr. EVANS. No, sir.

Mr. MANN. In your bill you say they would be required.

Mr. EVANS. No, sir. We have an amendment which relieves that. The amendment covers that.

Now, gentlemen, let us look at it in this way: You know the difficulty we did have throughout the United States in the matter of

negotiable instruments before that excellent legislation went into effect—the negotiable-instrument law. It imposed no hardships, and it has facilitated banking and facilitated business and, as I think, every banker in this House will agree with me that it had that effect, not with the banks alone, but with the individuals and communities.

The same question has now come up here in regard to these bills of lading. Some of my friends from the South seem to think this is a measure in the interest of the banks. It is not so, gentlemen, at all, because, you know, ordinarily our interests are a matter of exchange. Very often, in the South particularly, we will get a bill of lading shipment for 500 bales of cotton, and it will be in our custody only three or four days, and it becomes a question of exchange, in some instances one-eighth of 1 per cent only, for the collection of the drafts.

We can very easily say: "We are afraid of your bills of lading. We will not take them. We will not advance the money. We will place them on our collection book, and when we get the money we will hand it over to you." Suppose the banks of the South say: "We are afraid of that bill of lading?" It has been tested time and time again that when the goods are fraudulently shipped the banks have to suffer for it. Suppose we say: "We will give you no credit on this bill until it is collected." It does not affect the bank, but it affects the town and community and the farmers who have their cotton to market; and that is what we are seeking, not to antagonize the railroad companies, but to promote safe business. I have not heard them express themselves, but I believe they would favor it. We want to get a uniform bill of lading, some simple and plain and enforceable honest contract that we can rely upon.

Mr. BURKE. In the case of the scrap-iron incident that you pointed out would it not be possible for the bank that advanced the money on these bills to ascertain whether the bills were spurious?

Mr. TOWNSEND. He said the bank would have to lose.

Mr. EVANS. Yes; the bank lost, and no question was raised.

Mr. BURKE. It was stated that one reason for this legislation was because the goods are delivered and the bill of lading is afterwards negotiated. If the bank has any doubt about it, would it be impracticable to ascertain without any difficulty that those goods were delivered?

Mr. EVANS. You must remember the bank had no doubt about it.

Mr. BURKE. If a bank advances money on cotton out in a plantation, if you advanced money on such cotton, you are not going to loan the owner money on that cotton if you have any doubt as to his really having it?

Mr. EVANS. Not at all.

Mr. BURKE. Then, if you have any doubt about the property having been delivered where there is a bill of lading, is it not practicable to ascertain that fact?

Mr. EVANS. Yes, sir.

Mr. BURKE. Is not this business done right in the place where the shipment is made?

Mr. EVANS. No; it may be done at Charlotte, Charleston, Savannah, and also at Wilmington. We had one man who shipped about 18,000,000 pounds of cotton. These bills of lading came from all

around there. We can not undertake to ascertain whether those bills were regularly issued and the goods started. It is a measure of confidence.

You ask, Is it not the bank's business to be sure that they are dealing with a reliable man? It is a reliable man in this matter of cotton that generally "touches" the bank. We will handle thousands of bales of cotton, and a man goes into speculation and finds some bills of lading which the railroad company failed to take up, and as a last recourse in his desperation he takes these bills of lading and goes to the banker, who has confidence in him and with whom he has had dealings before, and he turns them into the bank and the bank pays him the value and loses the money.

Mr. BURKE. If the bill of lading appears to have been altered, ought not a bank to be charged with notice of the fact that there was an alteration there that might relieve the carrier of liability that otherwise he would be responsible for?

Mr. EVANS. It would do so, except for the fact that for years and years they have done nothing else than alter the great majority of them.

Mr. TOWNSEND. They have a provision on the back as to that, have they not?

Mr. EVANS. That is right.

Mr. TOWNSEND. Now, as a railroad man and banker, how would this affect carriers? Would it put them to extra expense and loss if they were obliged to do business in a business way instead of by the methods by which they have been doing it heretofore?

Mr. EVANS. Not at all. You gentlemen like practical ideas about these things, I suppose. I will cite you a case that happened three weeks ago, in which a carload of peanuts was shipped by a Wilmington brokerage concern to a party in Georgia. A man went into a bank and got money from the bank, \$700, on the bill of lading. The goods went there. The goods went direct, and the bill of lading with the draft did not get in until the goods had been in town several days. The merchant was very anxious to obtain the peanuts, so he went over to the agent and said, "I have not the bill of lading for this carload of peanuts which has arrived, but I am very anxious to get the goods, and now let me have them and I will bring the bill of lading when the draft comes. I do not know where the draft is. It has not come."

So the peanuts were delivered, and subsequently, in four or five days, the draft came in with the bill of lading, and the merchant discovered that the peanuts were not satisfactory—were not up to the grade that he had contracted for; and thereupon he refused to pay the draft, and it came back to Wilmington with the bill of lading attached. It was an irresponsible shipper, and the bank had to look to that bill of lading for its money. So they go down to the railroad company and they inquire, and the railroad company reports the delivery of the goods, and the bank shows the bill of lading. Now, that money, if it has been recovered, has been recovered since I came to Washington, and I know that the railroad company had declined to pay it over. They say the agent delivered the goods without authority, and it was not a negotiable bill of lading; and there they are.

Mr. MANN. Do you not think the bank was a little negligent to loan money in the first place to an irresponsible shipper for peanuts, and then wait a week for the bill of lading?

Mr. EVANS. That depends on how quickly the shipper brought the bill of lading in. The goods had gone before he drew the draft. That was not the bank's fault.

Mr. MANN. If the shipper brought in the bill of lading four or five days after the goods had been shipped—an irresponsible shipper—the bank ought to have made inquiry.

Mr. EVANS. When I said "irresponsible," I did not mean irresponsible in the sense you understand. The man was a man of good character, and was not attempting any sort of fraud, or anything of that kind. When I say "irresponsible," I mean they could not have made the money out of him by law. He did not have it. He was merely a broker. He was a man of good character, however, and of good standing in the community.

Mr. STEVENS. The amendment here would warrant it?

Mr. EVANS. Not the quality.

Mr. STEVENS. Whether they were good or bad peanuts?

Mr. EVANS. No. The bank would have to look to the shipper for the difference.

Mr. MANN. The bank, having delivered the peanuts without a bill of lading, would have to pay the value of the peanuts represented by the bill of lading?

Mr. EVANS. No. On the amendment which we propose, it says that the value of the peanuts when received—

Mr. MANN. That is what I say. The railroad would have to pay for the peanuts.

Mr. EVANS. Not the amount of the draft, but the value of the peanuts when received.

Mr. MANN. A little more than the draft?

Mr. EVANS. More or less than the exact amount.

Mr. MANN. If it were good banking it would be a little more. [Laughter.]

Mr. BURKE. Suppose the peanuts turned out to be bad?

Mr. GAINES. I do not suppose you want the railroad company to guarantee the amount or quality of stuff shipped?

Mr. EVANS. Oh, yes. They will not take a carload unless they pay by weight.

Mr. GAINES. I know; but take a man in the lumber business at some small station. A box car will be put off, and the owner of the lumber and the purchaser will get on that pile of lumber and grade it and measure it. Now, the station agent does not stand there and watch that, because he could not. He is neither an expert grader of lumber nor does he know how to measure it. Of course the railroad company knows that the person buying is not going to allow for more lumber than goes into the car, but if the railroad company were responsible for the amount, they would have to have their lumber measurer there. The railroad company's agent does not measure.

Mr. EVANS. He states so on his bill of lading.

Mr. GAINES. But he takes, and must take, the measurement of these two men.

Mr. EVANS. He checks them.

Mr. GAINES. The protection of the railroad company is this, that the man buying is not going to allow for more than is there, because when he gets to the other end he becomes the seller, and somebody else is going to check off the amount; but if the railroad company is responsible for the amount that goes in there, they would have to be careful to protect that measurement.

Mr. EVANS. I am glad you asked that question, because I am right in a section where we are shipping quantities of pine, as you know, to Pittsburg and Philadelphia and New York, and the railroad company checks up the number of feet in each carload, and they state the number of feet in their bill of lading.

Mr. GAINES. When you say it "checks up," I do not understand it.

Mr. EVANS. They satisfy themselves that it is there.

Mr. GAINES. Their agent does not measure the lumber.

Mr. EVANS. I think you are mistaken.

Mr. GAINES. As I understand it, they generally do not, because, as a rule, the station agent could not take this measuring scale and go on the car and measure it up.

Mr. INGLE. May I answer that?

Mr. EVANS. Yes; certainly.

Mr. INGLE. In getting carloads of lumber, you understand, Mr. Gaines, and in loads of miscellaneous products of one kind and another, where the description in a bill of lading is more or less indefinite, we must, of course, rely upon our customers' statements, and when we are more or less doubtful we will ask them to bring their invoices in. We are in their hands to that extent. If they bring in a false invoice on a carload of lumber, or a carload of apple waste, or odds and ends which are not staples, if you choose, we are in their hands. If they misrepresent things to us, all we can recover from the railroad is the value of that lumber. That is determinable easily enough by testimony between the shipper and the railroads at the time of the shipment. Is tha' right?

Mr. EVANS. Yes.

Mr. BARTLETT. You spoke a while ago of a spent bill. Is it not a fact if a man comes into a bank with a spent bill of lading that you would inquire into that, exercising ordinary care as to its character, and inquire why it was not used before?

Mr. INGLE. We never accept as collateral a bill having the appearance of a spent bill. But take an altered bill, which may have been altered a week or two months, but when brought into us it bears a date near the time of presentation——

Mr. BARTLETT. Forged?

Mr. INGLE. Yes; forged by somebody.

Mr. BARTLETT. Take a note due day before yesterday, but by some means the holder of the note has changed the note so as to make it the next week. You think you get a note not due, and therefore not subject to the equities between the parties?

Mr. INGLE. We do not dare to take a note of that kind, because the alteration releases the indorsers. But in the case of bills of lading the alteration is a common matter and is done deliberately by the carriers themselves in many instances, and their own regulations provide for such alterations.

Mr. EVANS. Take the towns that handle cotton. Go down to your

banks, and I am sure you will find away up into September occasionally some bills of lading dated July.

Mr. TOWNSEND. Is there anything further you want to say?

Mr. EVANS. Nothing, sir.

Mr. TOWNSEND. Then, Mr. Chairman, I will ask Mr. Aplin to speak. Give us your full name.

Mr. APLIN. My name is F. A. Aplin, of New York.

The CHAIRMAN. Let him proceed.

STATEMENT OF MR. F. A. APLIN, OF NEW YORK, VICE-PRESIDENT OF THE J. K. ARMSPY COMPANY.

Mr. APLIN. I am vice-president of the J. K. Armspy Company, of New York. I handle their interests in New York City and that territory.

I had no idea that I would be asked to say anything here, but as I happen apparently to represent two interests—we are manufacturers and commission merchants at the same time—the question that you have under discussion is of vital importance, in my mind, to the general commercial interests of the whole country. There has been nothing mentioned except cotton and possibly grain—

Mr. BARTLETT. And gopher's peas. [Laughter.]

Mr. APLIN. I speak particularly in the interest of fruit and salmon and the products of California. The source of supply is a long way from the markets, and it is almost, I might say, absolutely necessary that the system of the bill-of-lading collateral shall be fortified, shall be made good. It is almost necessary for the far western shippers to be able to finance his business at a critical time, and that is during the fall months. We have ample capital to handle the business of a large organization for the ordinary daily and monthly wants, but during the fall months, when perhaps 80 per cent—I think I do not overestimate it when I say 80 per cent—of the capital necessary to carry 12,000,000 of shipments that we make comes within ninety days, you can readily see that money becomes necessary.

We take the product from the farmer, from the producer, into our manufacturing plant and we immediately prepare it for market. When we move the goods from the factory—this is where we are manufacturers that I speak of now—we ship to every jobbing point in the United States the products of those factories. We start a car from San Jose, from Ventura, or San Francisco, or wherever the point may be, and we immediately finance it. It would take a larger capital than our line of business has to do it otherwise. In a majority of cases these sales are made payable on arrival and examination at the point of destination. Our bills of lading under the present system of the railroads are accepted without question.

The CHAIRMAN. That is, by the local bankers?

Mr. APLIN. Yes; by the local bankers. They accept our bills of lading very largely with the understanding or fact attached that it is single-name paper, as you may say. We indorse them. Our goods start and go all along the line through to New York State and every State in the Union. On arrival at destination the bank at that point generally holds the paper, it having gone through the channels and reached it. We find in a majority of cases that our drafts are paid with the bill of lading attached, and the goods are delivered upon

presentation of the bill of lading. But in many instances the goods are delivered without the bill of lading——

Mr. PIERSON. By the railroads?

Mr. APLIN. Yes; during the three rush months, the fall months. I presume that during that period I have had ten bills of lading returned to my office as not having been surrendered to the railroads, and had I been disposed I could have cashed to my friend, Mr. Pierson, the banker, those bills, and he would very readily have given me the value of them in money.

I want to emphasize the point that has been raised here, can business be done without a banker? I do not believe that it can.

The CHAIRMAN. Allow me to ask you right there, if it will not interrupt you——

Mr. APLIN. Yes——

The CHAIRMAN. What was the condition as to those ten bills of lading returned to you?

Mr. APLIN. The goods had been delivered to the point of destination, and the bills of lading had not been asked for.

The CHAIRMAN. They were returned by the bank?

Mr. APLIN. Yes; they were returned by the bank to us.

The CHAIRMAN. What had become of the draft accompanying that bill of lading?

Mr. APLIN. That had been paid in every instance, I think.

The CHAIRMAN. What was the result of that transaction between that bank and the person who received that property?

Mr. APLIN. I was going to answer that that was not easy for me to answer, because in the majority of cases those bills of lading originate at our San Francisco end. We have sought for years to make the bill of lading a valuable collateral.

The CHAIRMAN. Was there any indorsement on that bill of lading when it was returned to you?

Mr. APLIN. None.

The CHAIRMAN. None at all?

Mr. APLIN. None at all.

The CHAIRMAN. Nothing to indicate that it had been in any other hands——

Mr. APLIN. No, sir.

The CHAIRMAN (continuing). Than the gentleman's to whom you delivered it?

Mr. APLIN. No, sir.

The CHAIRMAN. Was it returned to you through that bank?

Mr. APLIN. I would not answer that question; I could not answer that question; I could not answer that question definitely; no, sir. I have a case in point at Elmira, N. Y., that will illustrate that. It will not illustrate that point exactly. We shipped a car of goods to a reputable firm there, and they were not shipped exactly as ordered. I was asked to adjust the question, and before I could adjust it really we found that the goods had been delivered; the draft had been paid. The bill of lading had not been surrendered; and that went on for about sixty days, if I remember it right, when the man finally took the paper up, and I presume surrendered the bill of lading.

Mr. STEVENS. As I understand, when the bill of lading is not surrendered it is because the shipper wants the goods at his own time and in his own time, and the railroad company is complacent about it?

Mr. APLIN. That is right, sir.

Mr. STEVENS. How much inconvenience would be caused to the trade in various portions of the United States by stopping that practice entirely?

Mr. APLIN. None; none.

Mr. STEVENS. And requiring the surrendering of the bill of lading in order to secure the delivery of the goods. In the case of perishable goods, such as fruit and berries and things of that kind, would it cause any inconvenience?

Mr. APLIN. I do not understand how they handle fresh fruits at all. In our business there would be no inconvenience at all, because our business is naturally along the draft line entirely.

Mr. STEVENS. And the bill of lading could be required to be surrendered without any inconvenience?

Mr. APLIN. The bill of lading could be required to be surrendered without any inconvenience—none whatever.

The CHAIRMAN. Suppose the consignment was of perishable goods, such as fruit, and the bill should be lost in the mail; would there not be inconvenience then?

Mr. APLIN. We had that question. I think the purchaser would immediately issue a bond of indemnity, and that would protect his interests.

The CHAIRMAN. Could that be done if the law prohibited the surrender of the goods without the surrender of the bill of lading?

Mr. APLIN. That is a point of law that I can not discuss.

Mr. STEVENS. It is something that ought to be discussed?

Mr. APLIN. Yes, sir; but I am not competent to discuss it.

Mr. BARTLETT. Do you not think in case of a bill of lading that would cause anything to be delivered at any distance, that if you would wire the railroad authorities that a certain carload of goods mentioned in that bill of lading was your property and had been transferred to you, and the railroad, in spite of that notice, were to deliver it to the persons, there would be some liability on the railroad without the bill of lading?

Mr. APLIN. I should think so.

Mr. BARTLETT. Yes.

Mr. APLIN. I should think so. The question was also up for discussion here a moment ago as to the responsibility of the agent, and as to the count that goes into the car. We frequently have bills of lading that read, across their face, "shipper's count." We have never had any trouble on that with the banks at all. I think out of more than 300 cars that I have handled through my office this past season not one single car has been short in count. Every car has been counted—so many bags, so many boxes, so many cases of this, that, and the other. I think, without a single exception, the count has been correct. At the time of delivery they sometimes report a short case or two, but before they make their payment of the claim, which we immediately put in upon it, they find what is missing.

Mr. MANN. Does the railway company always make a count?

Mr. APLIN. I do not think so.

Mr. STEVENS. At the time you ship the goods?

Mr. APLIN. No, sir; I do not think so. They take our count. I think they take our count.

Mr. STEVENS. Your freight is paid by weight, is it not?

Mr. APLIN. Yes, sir.

Mr. STEVENS. It is not paid by count?

Mr. APLIN. No, sir; not by count.

Mr. STEVENS. And the weight is noted on the bill?

Mr. APLIN. As a rule; yes, sir.

Mr. MANN. How does the bill of lading read—a carload?

Mr. APLIN. Five hundred cases, or 1,000 cases, and so on.

Mr. MANN. Under this bill the railroad company would be required to count these cases as they went in the car?

Mr. APLIN. I should say not. I am not sure about that.

Mr. MANN. They would be liable—

Mr. BARTLETT. If they did not count it?

Mr. MANN. They would be obliged to count it or take your word for it.

Mr. APLIN. Yes; the same as they do now.

Mr. MANN. But there might be some one else whose word would not be good, so that in practice, to save themselves, they would have to make a count?

Mr. APLIN. Yes, sir.

Mr. MANN. Would that interfere in any way with the handling of goods and loading the cars?

Mr. APLIN. Not in my judgment.

Mr. MANN. They would have to be present when the cars were unloaded also.

Mr. APLIN. They always take the receipts for count—almost always.

Mr. MANN. They take the statement of the consignee?

Mr. APLIN. Yes.

Mr. MANN. But if they are responsible for the number of cases, they would have to count them in and count them out.

Mr. APLIN. That is their system.

Mr. TOWNSEND. That is the way they do now?

Mr. MANN. He says that is the way they do in his case.

Mr. APLIN. No, sir; I say that frequently the cars are taken and the bills of lading read "shipper's count," and I have no doubt that frequently cars are loaded where the actual count is not taken by an employee of the railroad company.

Mr. MANN. Do you load on side tracks of your own?

Mr. APLIN. Yes; in many instances; and in other instances we load on other tracks.

Mr. MANN. I mean side tracks of your own?

Mr. APLIN. You mean side tracks up to the factory?

Mr. MANN. Yes.

Mr. APLIN. A spur?

Mr. MANN. Yes.

Mr. APLIN. Yes, sir. Just one more point, and that is this, that if it helps the people to move their goods, making a bill of lading that is without question, then every bank will be eager and looking for that sort of security. As it is, we have more or less a monopoly. There are only some banks that want these things. And I have been declined by banks in New York City, who positively will not accept the present style of bill of lading as collateral.

**STATEMENT OF MR. CHARLES CORBY, OF NEW YORK CITY, N. Y.,
IN THE WHOLESALE COMMISSION BUSINESS.**

Mr. CORBY. Mr. Chairman and gentlemen of the committee, I do not know that there is anything that I can add to what has been said before by those who have preceded me. It looks to me as though this is very largely a matter of law, so far as the bill of lading is concerned. I have been identified with the shipping business for a number of years on the Atlantic seaboard and in Chicago and on the Pacific coast.

I realize just as fully as any man engaged in business can that the business of this country—and particularly of the West, and possibly of the South—could not be conducted properly if the people who raised the products did not have the facilities afforded them by banks of raising money on bills of lading. It looks to me as though it was a question of one thing. The railroads as now constituted issue two bills of lading—what is known as a straight bill of lading, for which the railroad assumes no responsibility other than the fact that it takes the goods to transport them to a certain point and deliver them upon the payment of charges to the consignee—on the other hand, they issue what is known as an order bill of lading. In other words, the shipper takes the bill of lading to the order of himself and notifies the consignee. When that shipment arrives at its destination the railroad company is supposed under that order bill of lading not to make any delivery of the property contained therein except upon the presentation and surrender of that bill of lading.

Mr. BARTLETT. That is the obligation, is it not?

Mr. CORBY. Yes, sir. Now, it seems to me, so far as crystalizing that into law is concerned, that there is no reason why there should not, in the interests of business, be a national law enacted that would not work a hardship to the railroad companies, but would be a certain source of safety to those who are lending money against the products of the land.

There is no doubt of one thing. There is a deep-seated feeling of distrust in the community, arising out of the fact that a number of the States have construed the statutes now existing differently. I remember a case in point, a number of years ago, where goods were shipped to order, and the parties were notified, in the city of Chicago, and they were in very good standing at the time, and they had a bond with the Rock Island Railroad. The goods came to hand in due course, and instead of taking up these bills of lading they delivered the goods under the bond. The parties afterwards hypothecated the bills of lading and raised money on them, and the railroad company was sued, and a judgment given against the railroad company.

On the other hand, the same transaction has occurred in other States where a different construction has been put upon it. There seems to be a crying need of some legislation on the part of the National Legislature, so that all would be safeguarded. The railroad companies are now making fish of one and flesh of another; or, in other words, they are issuing an order bill of lading which distinctly states that the goods under that bill of lading shall only be delivered upon presentation and surrender of the bill of lading, and in a number of cases they have running accounts with parties to whom they

deliver those goods without the surrender of the bill of lading, thereby doing injustice to the shippers and rendering themselves liable to action, and at the same time placing the shipper in a position where it seems to me he is compelled, to obtain his rights, to enter suit.

Mr. STEVENS. Is not that the same with everybody as to rights; you have to go to the courts to enforce them?

Mr. CORBY. Yes; I understand that, but if there was a national law it would obviate a number of difficulties that they are working under now.

Mr. STEVENS. Is not the discrimination between the State and its laws rather than as to the railroad company? That is, Illinois would enforce that obligation and New York would not?

Mr. CORBY. I do not know as to that.

Mr. BARTLETT. If the courts of the United States had a different rule about that it would prevent the shipper, in case the amount was insufficient, from going into the United States court to collect his debt from the railroad?

Mr. CORBY. No, sir.

Mr. BARTLETT. As I understand it, the Supreme Court of the United States has decided in a number of cases that a bill of lading transfers title to the property, and must be delivered to the person who is entitled to the property.

Mr. MANN. Might not the power of the railway company, now, to issue or not to issue a negotiable bill of lading, make quite a difference as a preference given to one shipper as over another?

Mr. CORBY. No; I think not. Anyone can now get an order bill of lading by asking for it.

Mr. MANN. The railroad company makes no distinction about it at all?

Mr. CORBY. Not that I know of. I have been in business on the coast, a rather large concern, where we ship, probably, up to a thousand carloads a year, and never in any instance was there a refusal on the part of the railroad company to issue a bill of lading—an order bill of lading.

Mr. STEVENS. Might not the willingness of a railroad company to deliver carloads without a bill of lading to one and not to another be a preference?

Mr. BARTLETT. A discrimination?

Mr. STEVENS. Yes; a discrimination.

Mr. CORBY. If a railroad company issues an order bill of lading, they have no right to deliver those goods without the surrender of the bill of lading.

Mr. STEVENS. But you say they do?

Mr. CORBY. Yes, sir.

Mr. STEVENS. You say they have a list of people with whom they run accounts?

Mr. CORBY. All the railroads in large places have a credit list, upon which those who are in good standing are placed.

Mr. STEVENS. Can those on the credit list obtain the delivery of goods without the surrender of the bill of lading?

Mr. CORBY. I do not know as to that.

Mr. MANN. The railroad company now issues an order bill of lading to anybody who asks for it, and marks on it "nonnegotiable?"

Mr. CORBY. Yes, sir.

Mr. MANN. The bankers say that affects the value of the bill of lading as a collateral security.

Mr. CORBY. There is no question about that.

Mr. MANN. A shipper who can get a negotiable bill of lading has some advantage over one who can not get such a bill, has he not?

Mr. CORBY. As I understand it, he can not get a negotiable bill of lading.

Mr. MANN. You say they can not; they do not?

Mr. CORBY. No, sir; they do not.

Mr. MANN. But if the railroad company desires to give a preference to A in a town over B in that town, both men dealing in the same article. Heretofore they have given that preference by rebates or some other preferences of that sort. Now, that being forbidden by law, can they not give a negotiable bill of lading to A and refuse to give a negotiable bill of lading to B, and thereby give A a preference over B?

Mr. CORBY. I suppose they could.

Mr. MANN. If they could, then it is covered by the Hepburn bill, under which the Interstate Commerce Commission will regulate it when it becomes a law.

Mr. CORBY. That would be a legal point. I do not know of any instance where that has occurred.

Mr. MANN. It may not have occurred, but it might easily occur.

Mr. CORBY. There was something said about the checking of goods on the part of railroad companies. My experience has led me to believe that they check everything. You take all those points on the Pacific coast and on the British Columbia lines, and at the small stations where the lumber is shipped from, all those cars are checked; so that the railroad company has surrounded itself with every safeguard and is responsible for shortages, unless they issue a "shipper's count" bill of lading, which relieves the railroad company from any responsibility as to quantity.

On the other hand, if it is a regular bill of lading and they take a receipt for 500 cases of canned fruit or 500 cases of salmon or 500 bags of beans, they are supposed to deliver the quantity specified and the quality called for in that bill of lading, and in case of their failure to do so at the arrival of the goods there is a claim made against the railroad company, and if it can be proven that those goods were lost in transit the carrier is responsible.

Mr. BARTLETT. All you have to do is to show the bill of lading, that the specified amount of the salmon or the beans is named, and the railroad company would have to say that they did not receive them—

Mr. CORBY. The statement has been made that they did not check into the cars. As a matter of fact, in my experience the railroad companies always check into the cars, even cars of assorted freight. On the Pacific coast—I have more intimate knowledge of that than anywhere else—they check everything, even in making up assorted cars. They place these goods in certain parts of the warehouses, and check into the cars, and take the checker's receipt before the waybill is made up.

Mr. STEVENS. Do you know anything about the handling of perishable goods, fruit and berries and things like that?

Mr. CORBY. Only in a general way.

Mr. STEVENS. As to the practicability of requiring the surrender of bills of lading when those goods are received?

Mr. CORBY. I have no knowledge of the perishable-goods business at all. I do not know that there is anything further I can say, except that I believe it is in the interests of the business community, as it so largely depends for the moving of the products on the assistance of the banks, that there should be a bill framed to meet the present demands, and I believe such a bill could be framed, and I do not believe as a matter of fact the railroad companies would object to it, as they are now issuing a bill of lading similar to that called for.

Mr. STEVENS. They do not make any extra charge where an order bill of lading is issued?

Mr. CORBY. No, sir: the rate is the same. The bill of lading has nothing to do with that.

Mr. GAINES. Has this whole subject-matter been submitted to any of the railroad people?

Mr. CORBY. I do not know.

Mr. BARTLETT. Just one other question. If a bill should simply provide that all bills of lading issued for the transportation of interstate freight, or whatever it is, should be negotiable, notwithstanding any words on the face of the bill of lading to the contrary, would not that answer your demands?

Mr. CORBY. I do not quite grasp that.

Mr. BARTLETT. I say if this bill or any bill like it should simply provide that all bills of lading hereafter issued by a railroad company which should issue bills of lading for the transportation of freight in the interstate business should be negotiable, notwithstanding any words to the contrary in any such bill of lading, would not that answer your purpose?

Mr. CORBY. I do not know. I think some of the bankers might answer on that.

Mr. PATON. The trouble is that with such a law as that we would have too many conflicting decisions in the courts of the different States.

Mr. TOWNSEND. I am informed that certain representatives of the railroads and of the shippers have been discussing this question to-day and have talked with certain of the bankers here, recognizing, as I think they all do, the fact that it is to their interest to get together if they can, and they have agreed that there should be a delay, and that they should get together, possibly, and frame it up and make some amendments to this bill, or make a new bill that would be satisfactory to all interests concerned. They have asked that this matter be postponed for a sufficient length of time for them to get together and talk it over and see if they can agree on the preparation of a bill that would be satisfactory to them and also satisfactory to us, when it is brought here, so that if we could take an adjournment of this matter, say, for two weeks, they would have time to complete the negotiations with the shippers and the railroads.

STATEMENT OF MR. B. D. CALDWELL, VICE-PRESIDENT OF THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY.

Mr. CALDWELL. In my official capacity as representing the railroads, Mr. Chairman, and as acting chairman of the bill of lading committee, in the absence of the chairman, who is ill——

Mr. TOWNSEND. That is the official classification?

Mr. CALDWELL. Yes, sir; the bill of lading committee of the official classification territory. Briefly, for a good while the railroad companies and the shippers have felt that changes could be made in the bill of lading to the advantage of both parties.

For eighteen months a committee of representative shippers, at their instance and on the advice and recommendation of the interstate-commerce committee, have been in conference with the bill of lading committee, trying to make such changes in the bill of lading as would meet the interests of the shippers and the railroads. It is perfectly clear that the time has come in the tremendous increase in the business of this country to make some changes, and the railroad companies recognize that, and in their negotiations with the committee of shippers they made a great many concessions to the shippers' wishes. About two weeks ago a meeting was held between those two committees at which there was almost an agreement reached.

Another meeting is to be held within two weeks, at which undoubtedly an agreement will be reached, or there will be a failure to agree. About three months ago the bankers' committee—possibly longer than that—was formed, as I understand it, after they found that the committee of shippers were negotiating with the railroads. They asked to be permitted to be made a party to those negotiations. The shippers' committee in the origin of the negotiations insisted that no others should be admitted, on the ground that they had taken the matter up and desired to deal with it, and it is manifest (at least they had so represented), had representatives of all the bodies in this country been admitted it would have become a town meeting.

The railroad companies at that time felt that it would have been wise at that time to have had representatives from the other bodies, especially the bankers. But the shippers' committee thought that it was inadvisable. For that reason, when the bankers' committee came asking to be admitted it was found impossible to admit them. Notwithstanding that, they called a meeting at Lakewood, where we were in conference with others, and the conditions of courtesy were such that we did meet them informally and discussed these matters with them. We stated that we were in accord with their contentions, substantially; that there should be made a change as to the order bill of lading, but that we were not in condition to definitely enter into relations with them, because we were under obligations to the shippers, and as soon as our negotiations with them were concluded either favorably or otherwise, we would be very glad to meet them, in the hope of reaching an agreement.

Notwithstanding that, the bankers came to us some weeks ago stating that they had a bill which they proposed to introduce in Congress, and unless we could at that time enter into an agreement as a committee with them, they would proceed to do so. We restated our

position, and stated that it was unfair for them to follow that course of procedure; that it was precipitate and unwise, and would not accomplish such a good result as if we entered into negotiations, our belief being that we could reach an agreement.

Now, the present situation is this: At the end of two weeks, either on April 4 or on April 7, there is to be another meeting of the shippers. As I have stated, that will probably mean an agreement.

That agreement will simply mean that our committee on the bill of lading will make recommendations to the railroads, who will make recommendations to their principals—the various bodies whom they represent. It is the purpose of the railroad companies—and we have so stated to the bankers—that if this agreement is reached at this meeting we will say to the shippers that we deem it of the utmost importance that we shall be then in a position to confer with the bankers, in the hope of reaching an understanding that will bring about a situation whereby we can come to Congress all together and ask Congress to enact some legislation which will give us some ground under our feet, as against the discrepancies that exist to-day in the different State legislation.

Our feeling is that the bankers have been precipitate in coming to you in this matter, and our suggestion to them this morning was that we thought it would be wise—that we thought they had proceeded in this hearing in good faith with you—that we might postpone these proceedings, so that we might be in a position to deal with them in the open and without feeling and without bias, our feeling being that it would hardly be possible for them to deal with them by negotiation and the right result be reached if they were in the position of demanding of Congress legislation on certain lines, and holding that over our heads and saying: "You must come to this."

Our interest in this matter is probably greater than that of the bankers. The changes of the bill of lading which will be brought about if we succeed in our negotiations with the shippers are a thousandfold more important than these questions which are brought up by the bankers, because they have to deal with the question of liability. They have to deal with the questions of prompt payment of claims of the shippers, questions which you know—especially that of liability—are very much deeper seated and much more important in their effect upon the shippers of this country than this question.

Our feeling is, again speaking frankly, that in a general way the bankers themselves are responsible for the conditions that exist to-day with respect to their losses, in that their loans have been made to their patrons on the personality of the patron rather than upon merit of the guaranty that they have as to the property; and to a certain extent the bankers are responsible for the fact that these bills of lading have become accepted with more or less changes made in them. Most of the bills of lading are made out by the shipper, who brings them to the agent to sign. Most of the changes are made by the shipper, and, as a matter of fact, some of the banks—some have not—have been taking these bills of lading and taking their chances. Undoubtedly there have been some losses, but I think if you got the facts you would find that it had been a very small per cent.

Now, we would like to help them so that they would not have any losses. We would like to do all that we can, because we are interested

in promoting in every way the commercial development of the country. It is our bread and meat. I think in a general way that states the case from our standpoint, Mr. Chairman.

Mr. MANN. What is the shippers' committee?

Mr. CALDWELL. It is a self-constituted committee, whose attorney is Levy Maher, of Chicago, who took up this question about a year and a half ago.

Mr. MANN. That was at the time you were going to put a uniform bill of lading forward?

Mr. CALDWELL. At the time there was a change in the classification. They raised the question as to these two sets of receipts, the shipper's risk, and other points, and they went to the Interstate Commerce Commission protesting against the issuance of this classification. That resulted in a hearing before the Commission, and a recommendation of the Commission that the best way to get results would be for the shippers and the carriers to get together and see if they could not work this matter out. The shippers' committee, although self-constituted, is a very representative one. I think a member of this body, Hon. Martin B. Madden, is a member of it, and I am very happy to say that they have all through conducted the meetings rather in the interest of the shippers than in their own interests.

Mr. MANN. The shippers' committee, drawn together at the invitation of the Illinois Manufacturers' Association, embraces the shippers' associations throughout the country?

Mr. CALDWELL. That is right.

Mr. MANN. And you think you will be able to come to an agreement?

Mr. CALDWELL. Well, I would say—

Mr. MANN. I do not want to bind you by any statement.

Mr. CALDWELL. I think it would be fair to put it just as I have—that, in our opinion, we will at our next meeting either reach an agreement, to which we are exceedingly close, or else a failure to reach an agreement.

Mr. MANN. The current newspapers stated the other day that you had reached an agreement upon everything but one point.

Mr. CALDWELL. That is substantially true. There are 12 points covered in the bill of lading, and I think on 10 of them there is an agreement, and there is substantially only one point upon which an agreement has not been reached.

Mr. STEVENS. If no agreement is reached between the railroads and the shippers' committee, you would wish to be heard in respect to this matter when it is taken up again?

Mr. CALDWELL. We assume that you would give us an opportunity to be heard. We do not ask that now. Our suggestion to the bankers was that as soon as we were free from our present obligation to the shippers we would proceed with these negotiations and take up the bankers' or any other question as to the bill of lading. If we come to an agreement with the shippers there is no question we will be glad to deal with the bankers immediately. If we deal with the shippers there is no reason why we should not, then, so far as the bankers are concerned, enter into negotiations which we hope will adjust these matters.

Mr. MANN. If you fail with the shippers, do you not think you will have a hearing here on that subject?

Mr. CALDWELL. Well, I do not know. I think probably the shippers, having put their hand to the plow in this matter, will probably feel that in some fair, wise way they ought to try to reach a conclusion as to this bill-of-lading matter.

Mr. MANN. If they come to a conclusion with you they probably would want to come to Congress?

Mr. CALDWELL. I think perhaps you gentlemen are as well able to answer that question as I am.

Mr. TOWNSEND. We will not put this matter off indefinitely. It will be called up again—

The CHAIRMAN. I thought probably there were gentlemen present here on behalf of the bankers who might want to be heard now, who would want to go away. We might hear them to-morrow, just to suit their convenience, and then postpone further hearings on the subject until some such time as we could hear from this probable agreement.

Mr. CALDWELL. Let me state once more our attitude as to the bill of lading. We think that we ought to be in a position in dealing with the bankers' committee to deal in an absolutely unprejudiced way, and our feeling is that until we should be in a position to do that we should suspend these proceedings.

As I understand it, this is a committee hearing, and the bill has not been reported, and this is simply a suggestion, and if in a reasonable time we should fail to make progress in our negotiations the shippers would come right back to you.

Mr. RYAN. I am in receipt of a telegram from the president of the Chamber of Commerce of Buffalo, who desires also to be heard.

STATEMENT OF MR. LOUIS E. PEARSON, PRESIDENT OF THE NEW YORK NATIONAL EXCHANGE BANK.

Mr. PEARSON. Mr. Chairman, I just simply wish to say a word, and that is to the effect that the bankers at no stage of the negotiations, or attempted negotiations, with the railroads have had in mind asking from them anything which would in any way be construed by anybody as being unfair. We even sent to them copies of our proposed bill in advance, inviting their comments, some few weeks ago.

In answer to the point that we have been rather hasty in our action, I would say that it is only within the last two or three days that we have had from them suggestions along their own lines which, we believe, it is fair to give to them, looking at it from their standpoint.

Gentlemen, we want to get this thing solved, and we wish to get it solved just as soon as possible. We are perfectly willing to wait any reasonable length of time in an endeavor to have the three interests get together on a proper basis; and I wish to say that it will be entirely agreeable to our committee to have this hearing postponed until that opportunity is presented.

ADDITIONAL STATEMENT OF MR. WILLIAM INGLE.

Mr. INGLE. If you will permit me, Mr. Chairman, I hope I may say this, Mr. Pearson, some railroad people—evidently personally—have expressed themselves as being in entire accord with the particular purpose we expect to serve in this bill. We have a very strong

letter from the president of one of the most powerful and widely known railroads of the country, stating that, with the exception of clause 5—which we have asked to be withdrawn—it is in entire sympathy with the provisions of the bill. That does not possibly mean—although he does not so state—that he would not possibly prefer that these remaining sections should be whipped around into a little more clean-cut shape. But that is a widespread sentiment among the railroad people themselves, that they are ready for some measure of this sort.

Mr. RYAN. It is very probable that you will get together?

Mr. INGLE. Yes, sir; we hope so very much. That has been our one aim, to get together, for the last three or four months.

The CHAIRMAN. Mr. Paton, I suggested to you that we would, at your convenience, have a meeting to-morrow.

Mr. PATON. Yes, sir.

The CHAIRMAN. Do you wish us to carry out that promise?

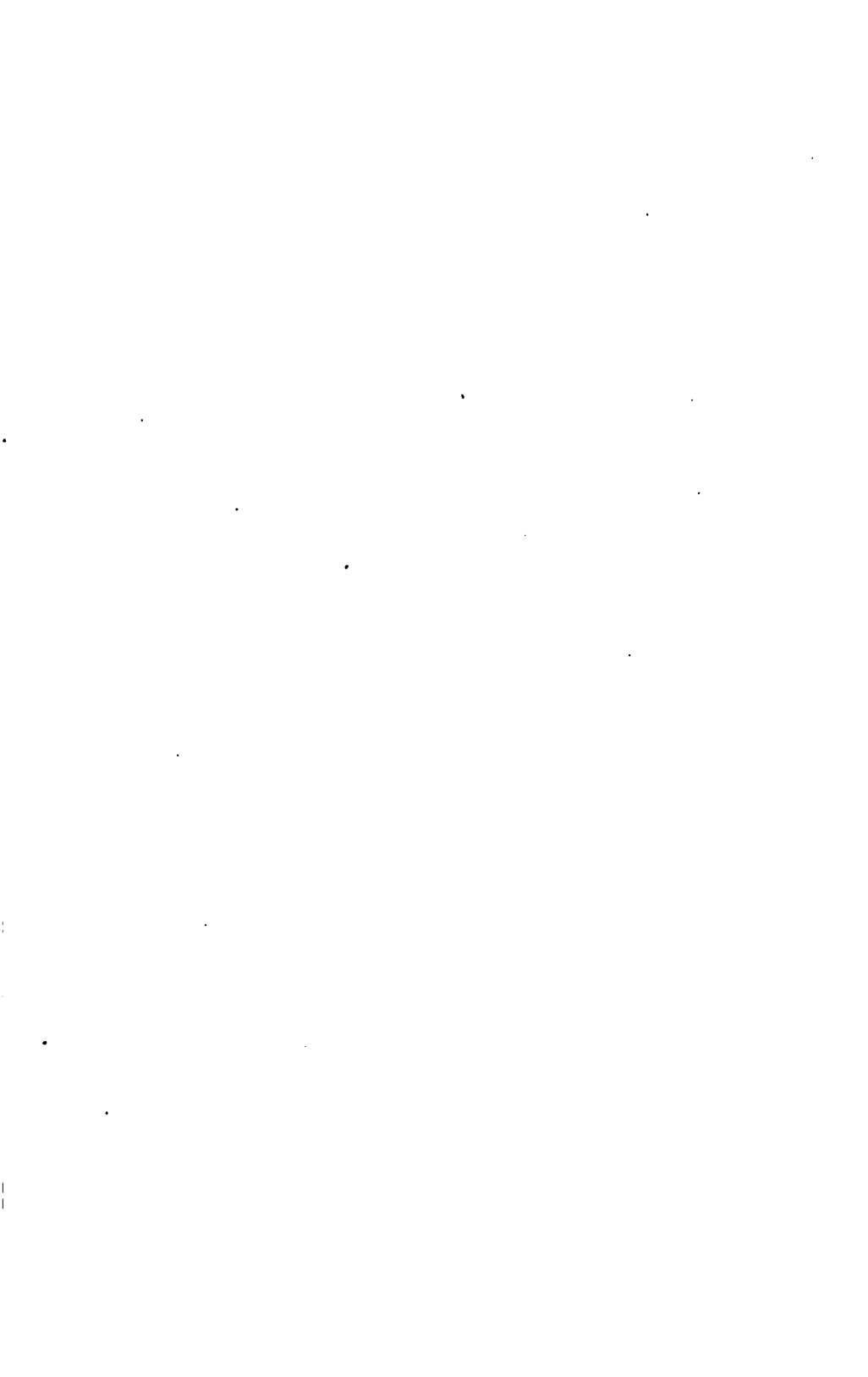
Mr. PATON. No, sir; I am subject to the will of the committee of bankers. I understand now that the thing will be postponed, if it is agreeable to this committee, until the various interests have had an opportunity to confer.

The CHAIRMAN. Then I would suggest to the committee that we do not postpone this indefinitely, but to a fixed day, say, four weeks from to-day, and make this a special order four weeks from to-day. Without objection, that will be the order.

(There was no objection.)

(Thereupon the committee adjourned.)

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HEARING

BEFORE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES

MAY 22, 1906

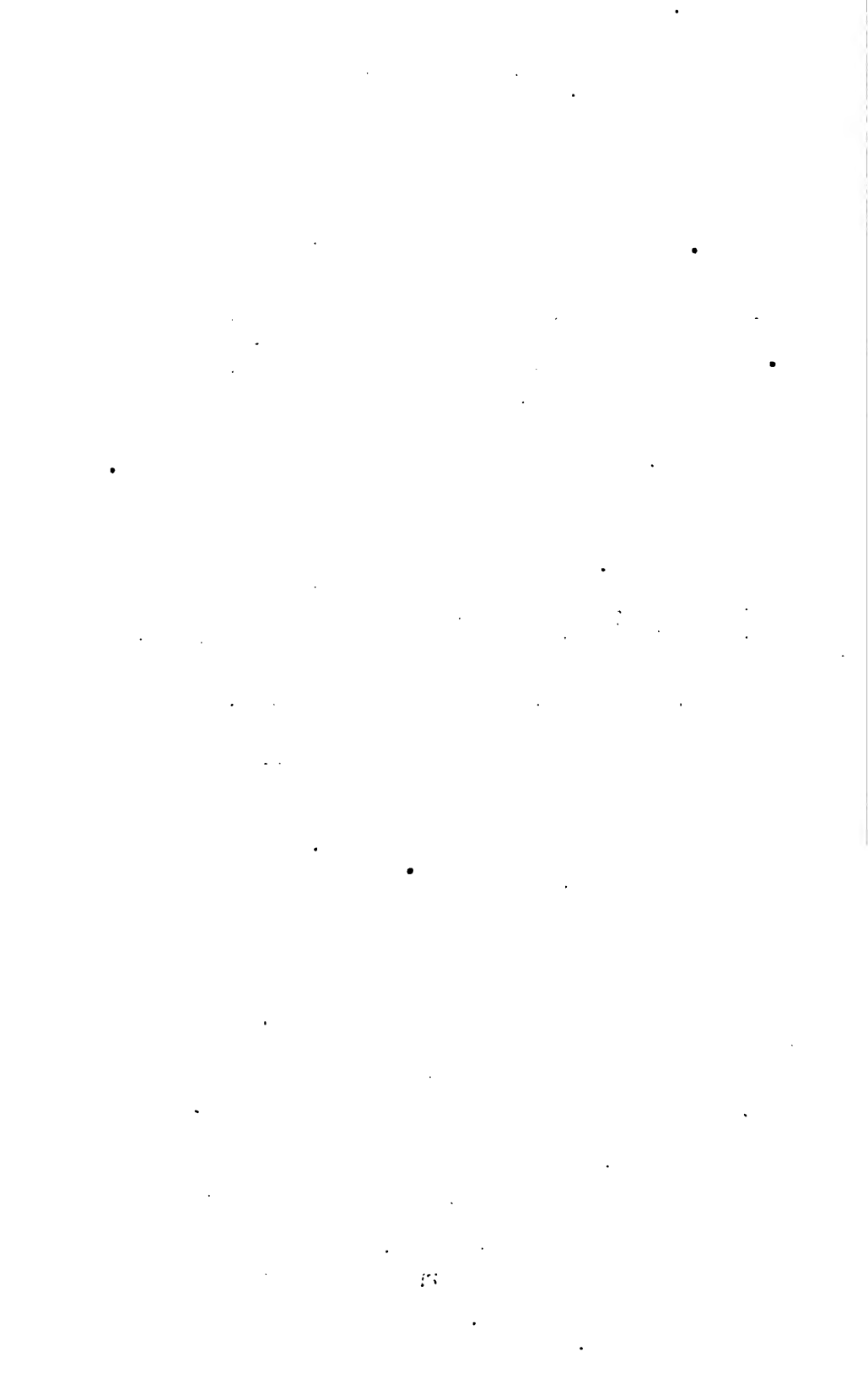
ON THE BILLS

H. R. 4438, H. R. 16676, and H. R. 18671,

TO LIMIT THE HOURS OF SERVICE
OF RAILROAD EMPLOYEES



WASHINGTON
GOVERNMENT PRINTING OFFICE
1906



H. R. 4438, 16676, AND 18671.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Tuesday, May 22, 1906.

The committee met this day at 10.40 o'clock a. m., Hon. William P. Hepburn in the chair.

Mr. ESCH. When we adjourned the other day, Mr. Chairman, we were on the latter portion of section 1 of the bill H. R. 18671, "to promote the safety of employees and travelers on railroads by limiting the hours of service of employees therein," and the question arose as to the striking out of the words "or train service," on line 6 of page 2, the subcommittee having recommended it.

The CHAIRMAN. I suppose we will consider that at the conclusion of the hearings.

Mr. ESCH. If there is no objection, we might get some light upon that from Mr. Fuller by asking him some questions only on this feature.

Mr. MANN. And I want to ask him some questions on something else afterwards.

The CHAIRMAN. Mr. Fuller, we will hear you.

STATEMENT OF MR. H. R. FULLER, LEGISLATIVE REPRESENTATIVE OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, TRAINMEN, AND FIREMEN.

Mr. FULLER. Mr. Chairman and gentlemen of the committee, I see by the statement of Mr. Esch that the committee has taken as the basis for this legislation House bill 18671. I want to say to the committee, with due deference to those who desired that bill introduced and with due deference to the committee's consideration of it, that it does not represent the views of the men whom I represent. Our views are expressed in House bill 18961. A great many criticisms from our standpoint can be made of bill 18671.

Mr. RICHARDSON. What is the difference between the one you assented to, 18961, and the other one?

Mr. FULLER. I will be glad to tell the committee. In the first place, as I stated before the committee, we were opposed to anything that savored of penalizing the men if they happened to work extra hours.

The CHAIRMAN. What objection is there to that, Mr. Fuller?

Mr. FULLER. I wanted to say that on page 1, line 4, of this bill, 18671—

Mr. ESCH. There is no bill so far that penalizes the men.

Mr. FULLER. Yes; but I wanted to say this: There is an effort, I understand, on foot to amend the bill in that way.

The CHAIRMAN. Let me ask you, Mr. Fuller: It is said that one of the necessities for the enactment of this bill is that railroads impose upon the men. They recognize the fact that if they do not go when they are desired to go, they will in some way be ostracized and hurt. Now, is it not true if there was a provision of this kind, making it an offense for them to go out and violate the law, the company could not with any kind of decency insist upon their going, and it would strengthen them in their position?

Mr. FULLER. I answered that before. It appears in the hearings. I wanted to confine myself to the criticisms of this bill. It says here, "That the provisions of this act shall apply to every common carrier or carriers, their officers, agents, and employees." Now, in the event this amendment is not put in, it is a question whether, in my mind, the words "and employees" can not be construed also to apply to them, so far as the penal provision is concerned.

There is a lot of matter in section 1 of this bill that we think is entirely unnecessary. It says, "The term 'railroad' as used in this act shall include all bridges and ferries used or operated in connection with any railroad." The question of employees employed upon that particular part of the line does not come into this discussion, because those people on bridges and ferries are not worked excessive hours. We would rather have the bill as brief as possible and to the point.

Now, on page 2, line 3, it says: "And the term 'employees' as used in this act shall include conductors, brakemen, engineers, firemen, train dispatchers, telegraph operators, or other persons actually engaged in train operation or train service, and notwithstanding that the cars on or in which they are employed may be held and operated by the carrier under lease or other contract."

Now, as to cars being leased or operated under contract, it is all unnecessary. The courts have held, in construing the safety-appliance act, that the carrier who is operating the car is responsible for it at that time.

Another thing, we object to naming the employees, for two reasons. The first reason is that it is a very easy matter for a railroad company to evade the law by changing the term used to designate the employee. For instance, a brakeman is often now called a train man, and if we attempted to name the employees we have got to put in the name "porter," because there are a number of large lines in the country—I have in mind particularly the Santa Fe—which dispensed with the services of the forward brakeman on the passenger trains, and they now have what they call a "porter" doing that work.

If we apply the names we will have to cover that fellow, and if we use the word "porter" we will either have to use extra language to define it or will include those porters employed on Pullman cars who have nothing to do with the operation of a train; and we would rather, as expressed in our bill, have the provisions apply to "any employee engaged in or connected with the movement of any train in which such commerce is handled." That confines it directly to the movement of the train.

Mr. BARTLETT. Where is that?

Mr. FULLER. That is on page 2 of House bill 18961, lines 1 and 2.

Mr. RICHARDSON. Read that over again.

Mr. FULLER (reads): "Any employee engaged in or connected with the movement of any train in which such commerce is hauled." That confines the operation of the bill specifically to those who are directly engaged in the train movement, and there can be no question about it. A porter on a sleeping car has nothing whatever to do with the movement of a train.

Mr. RICHARDSON. What is the difference between the language you use and "train service?"

Mr. CUSHMAN. Read that language over again, Mr. Fuller.

Mr. FULLER. It begins at the bottom of page 1: "Any employee engaged in or connected with the movement of any train in which such commerce is hauled."

Mr. RICHARDSON. Now, tell me the difference between that and "train service."

Mr. FULLER. It would be easier to construe the words "train service" to cover a porter on a Pullman car, because he is actually on the train and engaged there, but not in the movement of the train.

Mr. CUSHMAN. Would not that language be broad enough to cover switchman, connected with the movement of any train?

Mr. FULLER. Switchmen are not train men. Their work is not that of the movement of trains. The word "train" was never better defined than the vice-president of the Southern Railway defined it a few years ago upon being questioned by the chairman of this committee. He said it was a train after it was made up in the yard and got out under the dispatcher's control. That is a train.

Mr. CUSHMAN. The bill you propose does not mention train men at all?

Mr. FULLER. Switchmen are not connected with the movement of the train.

Mr. RYAN. If they make up the train in the yard they are?

Mr. FULLER. It is not a train within the meaning of the standard rules in operation upon the railroad until there is somebody in charge of it, an engineer and conductor, and they get their orders and the engine is attached upon one end of it and green flags attached to the other end. Another train, for instance, could not come along and run by that train if there were green markers on the rear end and no engine on the other end, and if it was going the other way and there was no engine attached it could not go on. The train is not represented until it has an engine on one end and green flags on the other end.

Mr. MANN. Is not a man connected with the movement of the train who will have to throw a switch to determine which track it shall run on?

Mr. FULLER. I think so.

Mr. MANN. Suppose you have a station agent where there is a very small amount of business and few trains, and that station agent watches the trains for twenty-four hours nominally, but actually works only three or four hours a day?

Mr. FULLER. As to actual switching service it would not apply, but it would apply to such a person.

Mr. RICHARDSON. It would apply to the man with the flag, telling trains to go on?

only have about six hours' actual service in the day. They are paid for a full day's time. They live in the country, where they want to live. They must spend the night there. This law would prohibit that. They could not get back at night. They would have to stay in Chicago at night, simply because they had worked three hours in the day.

Mr. FULLER. I do not think that law could be construed to that extreme view. I want to be fairly understood. I said to the committee that we approached this question with reluctance. Now, we are not so overly anxious for legislation of this sort that we are willing to acquiesce in or submit to a bill that would attempt to meet all these objections that are raised by opponents of this legislation, because in that case it would be worthless. Unless we can have a bill that lays down a practical rule, a reasonable one, which requires the railroad companies to adjust their conditions to it rather than framing it to meet their conditions in detail, I think it would be better to let it alone. That is my honest conviction about it.

Mr. MANN. What I wanted to get at, as I understand it, is the railroad sending out a crew that has been on duty six hours.

Mr. FULLER. Unless you gentlemen can see this in this way, it is useless for you to use your time in the consideration of this question: Is it just and right to the public and the employees that men should be worked excessive hours? That is the first thing to find out. If it is not right, then there should be some reasonable limit as to what is excessive, and they should not be permitted to work above that number of hours. Now, then, if we can not do that, we had better have no law. I say you will find a hundred and one objections to everything that is proposed, and especially with regard to this legislation. But if it is wrong to work these men above the number of hours specified, then I say it is the duty of Congress to say to the railroad companies, "You shall adjust your conditions so that these men will not be required to work excessive hours and endanger their lives and the lives of the public."

Now I say that the safety of these men and the safety of the public is a matter of greater importance than the convenience these railroad companies now have as the result of working the men excessive hours.

Mr. SHERMAN. Your ideas about the results desired to be attained are not different from those of the members of this committee, but the difference is simply in the point of reaching that result. That is all. I am perfectly certain that no member of this committee differs from you in the desire to legislate in such a manner that the men shall not be worked beyond the point of a reasonable strain upon the human system, so as not to harm themselves and endanger the lives of others. Now the simple point is how to get at that.

Mr. FULLER. I have tried to be fair in this. If you listen to the arguments of the other side we will have no legislation. They say we want no legislation; that it is not necessary. Now, I am trying to give the committee all the help that I can, but I think if you want to cure this abuse you will have to lay down a rule and say to the railroad companies: "Gentlemen, the law is bigger than you, and you have got to adjust your conditions to this standard."

Mr. RYAN. The great trouble is with trains on the road, and not on the suburban lines.

Mr. FULLER. We have tried to meet that. When casualties occur after the men have started on their trips, they can go to their terminals.

Now, section 3 of this bill brings up the question of giving the Interstate Commerce Commission the authority to reduce the number of hours. We did go in with the Commission on the first bill. They agreed to a proposition to let them lay down a rule. It was thought not proper to do that by members of this committee, and we backed away from that proposition. Now, since we dropped that idea we would prefer that you lay down a rule, and that the Commission should have nothing to do with it except to enforce it. I think that is right.

Mr. MANN. You seem to assume that all these objections are objections made by the railroads. So far as I am concerned, I represent a locality that relies very largely on the Illinois Central Railroad to get down to business in Chicago, and you would simply wipe those trains off the face of the earth. Those people are just as much interested in this matter as the train men are.

Mr. FULLER. But they do not want any legislation, we know.

Mr. MANN. They do not want any legislation that will prevent their getting to the city.

Mr. FULLER. The railroads are opposed to this legislation.

Mr. MANN. I am not talking about the railroad companies. You are thinking that everybody who is talking about objections to this bill refers to the railroad companies.

Mr. FULLER. I was not speaking with regard to you. I was referring to the opponents of this legislation. I referred to the other side.

Mr. MANN. I understand.

Mr. FULLER. Another thing: This first bill provides only a penalty of \$100. The safety-appliance law has a penalty of only \$100, and they are violating it in hundreds and thousands of cases; and, as I said before, if we hope to get any legislation that is effective, we have got to have some restraint put upon these companies, and I can no better express the effect of a \$100 penalty than by reading to you two or three lines of what Judge Payson said before this committee on this particular subject on May 1, recorded on page 51 of your hearings. After being questioned by Representative Richardson, Mr. Payson said:

I don't think such legislation would be any additional incentive to a railroad company to make additional regulations with reference to the management of the railroad than are in force to-day, because certainly a penalty of a hundred dollars visited on a corporation, looking at it simply from that side, would not amount to very much in dollars and cents.

That expresses it to a T. One hundred dollars fine is nothing in the eyes of a railroad. Both Houses of Congress have passed a bill—the rate-regulation bill—which makes the penalties and fines \$5,000. They would fine a member of the Commission or an employee of the Commission \$5,000 for giving out any information.

They would fine the railroads thousands of dollars for violations of regulations with regard to rates. Here is a thing in the interest of life and limb. The Interstate Commerce Commission want a \$100 fine, and we want a \$1,000 fine, and we think it right that it should be a thousand dollars.

Mr. CUSHMAN. Are you through with that particular phase of the subject?

Mr. FULLER. Not quite, yet. I will be through in a minute. At the bottom of page 3 of that bill—bill 18671—the proviso reads:

Provided, That the provisions of this act shall not apply in any case where, by reason of unavoidable or unforeseen train accident or act of God occurring after such employee has left a terminal, he is prevented from reaching his terminal within the time specified in section 1 of this act.

Our bill provides for casualties that occur after a man has started on his trip; that is, as applied to the maximum number of hours which he shall work; but there is no relief in this bill as to the amount of hours that they shall give him when he comes in off the road. This would not only permit them to work him over sixteen hours in such cases, but permit them to make him go on duty when he came off the road, without sufficient time to rest.

Mr. STEVENS. What bill is that?

Mr. FULLER. This is the bill 18671, at the bottom of page 3. Again, the words "unavoidable or unforeseen train accident" are too broad. It is a question of from what standpoint it is going to be considered "unavoidable."

Mr. ESCH. You use in your bill the word "casualty?"

Mr. FULLER. The word "casualty;" yes. We take it from the State statutes. It covers all these things properly. It is a thing that is unforeseen. It is a better word, in our opinion.

Mr. RICHARDSON. You suggest the substitution of the word "casualty" for "unforeseen and unavoidable accident?"

Mr. FULLER. Yes; for "unforeseen and unavoidable accident." The term "unavoidable accident" is susceptible of too broad interpretation.

Mr. RICHARDSON. I admit it is susceptible of a great deal of diverse interpretation. "Unforeseen" is a different word.

Mr. FULLER. "Casualty" is a thing that is naturally unavoidable.

Mr. CUSHMAN. Are you through with that branch?

Mr. FULLER. Yes, sir.

Mr. CUSHMAN. I want to ask you a question or two about this penalty provision. Do I understand that, in your judgment, any penalty which this bill provides for the violation of the law should go wholly to the carrier, to the railroad, and not to the men?

Mr. FULLER. That is my personal opinion, and the question has been submitted to the officers of our organization, and I tell you frankly that we are opposed to penalizing the men.

Mr. CUSHMAN. Do you not think there is some force in the suggestion made by the chairman, that if a penalty attaches to the men as well as the railroad their hands would be strengthened?

Mr. FULLER. No; I do not. I think it would put into their hands a means of violating the law.

Mr. CUSHMAN. In what way?

Mr. FULLER. In the first place, we are against it on principle. The railroad company is the common carrier which does the business for the public under the authority of Congress, and it has to take that responsibility and look for the safety of travel; the employees are not charged with it. The question of the action of employees is something for the carrier to take care of. They should be responsible for that.

Mr. KENNEDY. If the company should order a man to go out and he should acquiesce, he would become guilty with the company, and therefore could not complain?

Mr. FULLER. If you put that provision in the bill, I can see that this might be the condition: A railroad company might have a turn run, and their schedule might be, say, sixteen hours or fifteen hours without any delay; that is, run a man out to a certain point and back to his home. Now, if the rule was laid down that they could not work that man above sixteen hours, they would see to it that he was given a proper train, a train not with excessive tonnage, so that he could get in. They would make their schedules shorter.

Mr. CUSHMAN. What has that got to do with the penalty?

Mr. FULLER. Now, if you put in a penalty against a man, the railroad company can get a man within a few miles from his home. That is the temptation to the men that often leads to working excessive hours. We can not blame them. A man is, say, within 8 or 10 miles from his home. He is faced by a violation of the law on the one hand and being kept away from his home on the other. The railroad company knows it is safe, under these circumstances, to run him on to the terminal, because he has got to keep his mouth shut. Otherwise the railroad companies will have to adjust their runs so as to get the men in within the prescribed limit.

Mr. CUSHMAN. Now, Mr. Fuller, in the proposition of the passage of this bill, if the penalty should be changed, as has been talked about, that would be a law which would make it unlawful when the act itself should be committed practically by two parties; that is, the party representing the railroad ordering the man out, and the party accepting the order constituting the other party. Now, do you think, as a matter of general equity, that we ought to make an act committed by two people a crime as to one and nothing as to the other?

Mr. FULLER. I can offer no better argument on that than the argument I presented to show where the present agreements were violated. One great trouble about this is that, even after you pass a law, there would be some men—not the majority—who would still like to work, and the company may influence them to work.

Now, they have got to keep their mouths shut, if they are penalized, and they will. Now, here comes a fellow in who wants rest, and he knows if he objects the other fellow behind him, who has got the name of working excessive hours, will do it, and he will be put down as a kicker, just as it has worked now under an agreement—under an agreement now that these men shall not be required to work an excessive number of hours. It is the desire of the railroads and officers to work the men excessive hours under certain conditions, and certain of the men want to do it.

The fellow who wants to do the right thing is coerced into working an excessive number of hours, and you would not only penalize the fellow who at heart would do wrong in this case, but also the fellow who, under force of circumstances, is compelled to violate the law unwillingly. No manager is going to put up with a man in his service very long if he goes around sticking the law up in front of him and saying, "Here is the law. This makes it a crime to do such and such."

Supposing there was a good run to go out, where a man would not be gone long—and there are those good runs on most roads; for instance, a stock train—and to get that run to its destination involves an infraction of the law. The men inclined to work excessive hours would accept that run, because they can see a preference there and a benefit. Suppose they want men to go out on another run, and one of the men sticks the law up at them. That is not good from the standpoint of discipline, and I do not think it is right from the standpoint of discipline to put a thing like that into a man's hands to enable him to do just as it suits him and affect other men thereby.

You can not get prosecutions under such a law. In my mind it will be much harder to enforce this law if there is a penalty put upon the man in addition to the company.

Mr. CUSHMAN. Why will it be harder?

Mr. FULLER. Because they will both keep their mouths shut.

Mr. CUSHMAN. Is it not a fact that the railroad men you represent will make an effort in good faith to enforce the law?

Mr. FULLER. Yes.

Mr. CUSHMAN. Do they want to evade the responsibility put upon them and put it all upon the railroads?

Mr. FULLER. No; but they are not willing to put their heads into a noose and be penalized for something that the employer is absolutely responsible for. The employer is the one who makes the conditions. He knows when every man gets in from the road, and when he goes out; and if he does not know it, he ought to.

Mr. CUSHMAN. This law is to prevent the employer from creating the condition—a wrong condition?

Mr. FULLER. Yes; but if he does create that condition by this proposition you want to penalize the man along with him.

Mr. CUSHMAN. The condition is created by the two parties.

Mr. FULLER. No; it can not be created unless the responsible party, the common carrier, wants it done. The railroad is not going to run trains and work men excessive hours unless it has a motive for doing it.

Mr. ESCH. Are these parties on an equal footing?

Mr. FULLER. No, sir; they are on an entirely different footing. They are unequal.

Mr. ESCH. If you penalize the men and prosecute the case, could not the railroad employee plead immunity?

Mr. FULLER. I think so.

Mr. ESCH. Then how could you convict?

Mr. FULLER. If an inspector of the Interstate Commerce Commission was around seeking evidence of the violation of this law he would go to the employees, and there is where he would have to go to get information, or get a line on it, as to what was going on. The employee would keep his mouth shut, and he could not get any information out of him. As it is now, they get a whole lot of information in regard to the violations of the safety-appliance law from the employees. They have got to get it from them. But if those employees were penalized—and that was suggested here before this committee in the consideration of the safety-appliance act, that the employees should be penalized also for the violation of the act—they could not get the information.

Mr. BARTLETT. It is not uncommon in the State statutes to find

cases where one man who is party to a crime is punishable and another is not. Take the law forbidding the selling of liquor to minors, for example.

Mr. WANGER. Mr. Fuller, do you not think the telegraphers are on a very different footing, where they have an opportunity to go on duty without knowledge of the station master?

Mr. FULLER. They do not go on duty without the knowledge of the station master.

Mr. WANGER. Can not a telegrapher continue on?

Mr. FULLER. No; the train dispatcher who has charge of them knows every man's call. He knows his initials, and if he is used to the men he knows whether or not it is bogus. It was suggested here that the railroad in Colorado on which a wreck occurred had no means of knowing that the day operator was on duty, and had no means of knowing the number of hours he had been on duty. I say it had the means.

Mr. WANGER. You mean it might have had?

Mr. FULLER. Certainly; and the facts have never been known in regard to that wreck. This committee, I believe, asked for copies of that report.

Mr. MANN. Supposing a train crew was out on the road and the sixteen-hour limit expired before they returned. If they continued on duty, of course under this provision it would penalize the company. I apprehend if they should continue on duty without direction it would be difficult to convict the company. But suppose the company should give them to understand that it was their business to run through, but gave them no specific direction to that effect?

Mr. FULLER. You can not work a man on a railroad without direction. The company knows where he is every minute.

Mr. MANN. The company does not know where he is on these little roads. They know between what telegraph stations he may be, but that is all.

Mr. FULLER. That is close enough. They know what time that crew started on duty, and they know when their sixteen hours are up.

Mr. MANN. That is true of the Pennsylvania Railroad Company, but it is not true of the railroads of the West.

Mr. FULLER. A crew on a railroad can not work on their own motion. The company must order them.

Mr. MANN. The company orders them to begin that?

Mr. FULLER. Yes; and they order them to begin and continue that trip. They are supposed to take their train to a destination, unless they get orders to do otherwise. That can not be gotten around in any other way, Mr. Mann.

Mr. MANN. I do not see how you can do that unless you forbid employees to do the work when the company has a man out on the line.

Mr. FULLER. You mean to provide a penalty?

Mr. MANN. In some way do something.

Mr. FULLER. The company has just as much control over that man when he is out on the line as when he starts at the terminal. They have got charge of the train. A train can not move without their knowing it. Their telegraph operators at every station report to the train dispatcher at what time the train passes.

Mr. MANN. The train might be two hours at a telegraph station, and often, as in the West, they continue on duty at the end of that time.

Mr. FULLER. It is because of the conditions of employment that they do that. They are carrying out their orders or instructions when they get into that condition.

Mr. CUSHMAN. Just a moment, Mr. Fuller. The latter clause of the bill H. R. 18961, being your bill, provides—

That to enable said Commission to execute and enforce the provisions of this act it shall employ such inspectors or other persons as may be necessary, and its agents or employees thereunto duly authorized by order of said Commission shall have the power to administer oaths, interrogate witnesses, take testimony, and require the production of books and papers. The Commission may also order depositions taken before any officer in any State or Territory of the United States or the District of Columbia qualified by law to take the same.

What is the idea of the necessity of these inspectors?

Mr. FULLER. I am glad you spoke of that, because I overlooked it. That is the thing I wanted to speak to the committee about. That was in the bill first agreed to by the Commission, and we would like to have it continued in this bill.

Mr. CUSHMAN. For what purpose?

Mr. FULLER. For the purpose of getting information.

Mr. CUSHMAN. As a matter of fact, is not this information as to any violation of this law in the possession first-hand of the railroad employees? That is, if you had only a dozen or twenty inspectors they could not cover the United States, but they could only be in a few places, whereas if this bill is enacted into law and it is violated by the railroad companies in any part of the United States the railroad employee working at the place where the law is violated, who knows of that violation, has that information at first-hand?

Mr. FULLER. If he is a man whom they caused or permitted to work excessive hours, he would know it.

Mr. CUSHMAN. Yes; and there might be no inspector there?

Mr. FULLER. Yes; and the company knows it just as well as he does.

Mr. CUSHMAN. And as a matter of fact, is not the information about the violation of this law more fully in the possession of the man than it could possibly be in the possession of any reasonable number of inspectors?

Mr. FULLER. No, sir. Let me tell you. Each crew dispatcher that handles the men, the crews on the railroad, has a book. In that book the men register when they go out or report for duty. When they get back in, they come and register again. You can tell by that book whether the crews worked excessive hours. These inspectors can get that information off of that book, and we want to give them the authority to do that.

Mr. CUSHMAN. The men have this information at first-hand when the entries are made in the book. The entries in the book are only presumptive evidence, while the facts in the possession of the men are absolute evidence. If there was no other evidence obtainable, the evidence in the books would be taken, but in a criminal case you can not take what somebody has written in a book and substitute that for knowledge actually in the possession of a man.

Mr. FULLER. Suppose an employee dislikes, lots of times, to say anything about a violation of the law?

Mr. CUSHMAN. That is the point I wanted to get at.

Mr. FULLER. And in the event an inspector tries to get such information from such a man and can not get it he can go to these registry books and get a line on what has happened. Then these men can be called into court to testify.

Mr. CUSHMAN. Is there not a disposition on your part and on the part of these men to attempt to place the responsibility on the company and at the same time evade responsibility which should properly attach to the men?

Mr. FULLER. No, sir. A penal provision should not properly attach to the employee.

Mr. CUSHMAN. Why would it be wrong to place the responsibility on the men as well as on the company?

Mr. FULLER. If you had been a railroad employee yourself and had been through the experience of railroad men for years, you would understand—

Mr. CUSHMAN. I have worked on a railroad, Mr. Fuller.

Mr. FULLER. Have you ever worked in train service?

Mr. CUSHMAN. No, sir; I have not.

Mr. FULLER. You would find about the time you squealed once or twice—you would find it unpleasant to remain in the service of that company, if you were not dismissed from it entirely. This committee put a provision in the rate bill that gave the Government the authority to examine the books and papers of railroads with regard to rates. That has passed the Senate. It is for the purpose of finding out whether they are doing right or not.

Mr. CUSHMAN. That is a vastly different proposition.

Mr. FULLER. Yes; that is a question of dollars and cents. This is a question of safety to life and limb.

Mr. MANN. There is this difference about it, as far as the criminal code is concerned, that there is no immunity provision in this, and you could not require an official of the railroad company there to produce books in court or allow an inspector to examine the books, because that would render him criminally liable under this law.

Mr. FULLER. I am not a lawyer, but I can not see how they can call for the books with regard to rates and not be permitted to do so in a case of this kind.

Mr. MANN. If you were a lawyer, you would readily see; or if you had examined the bills, you are lawyer enough to know—

Mr. FULLER. I wish I was a lawyer, because I have to run up against lawyers so often that I would feel more competent to answer questions if I had more knowledge of law; but as to the justice of it, I can not see why they can not call for the books in regard to this as they can do with regard to rates.

Mr. MANN. There is an immunity provision under the interstate-commerce act, but there is no immunity provision under this act. You make the train dispatcher criminally liable here, and you could not require him to show these books unless you gave him immunity from prosecution.

Mr. FULLER. The book is not always in the hands of the man who violates the law. You can go to the superior officer of that fellow and ask him for that book, and he would have to show it. The

train dispatcher is only the custodian of the book when it is in use. You can get it from another officer. I do not understand why it is incriminating to the other officer if he did not order him to do this, if the train dispatcher is to blame.

Mr. GAINES. Mr. Fuller, let me suggest a case now. So far as I am concerned, I will say to you I believe that the man ought not to work excessive hours, and that the public should not be subjected to that danger, if it can be reached; but I do not like the idea of one-sided legislation.

It does not address itself to my sense of fairness. Now, you take the case of a telegraph operator. The day man is on at night. Suppose you ask him where the other man is. He says he is ill. It may not be true. It may be another case where he is taking that man's place to let him go to a dance, as in the Colorado case the other day.

Mr. FULLER. I do not know anything about the Colorado case. The reports that should be here in compliance with the law are not here. If you are going on suppositions, I would like to cite something I heard about the Colorado case. I understood the train dispatcher knew that man was away, and the night operator told him he was sleepy and wanted him to send a man on a certain train to relieve him, and he did not, and he told him again, and he promised, but did not send the man.

Mr. GAINES. In such cases the guilty party should be prosecuted and convicted. Now, suppose that happened; you make that person custodian of those books. He generally does now—he in most cases ought to know, but in some cases does not actually know, how long a man has been actually off, and guilty. It would relieve from any conviction a man who certainly must know that he has violated the law.

Mr. FULLER. I do not think you have stated the case properly. I say this, that a railroad company or the man in charge of the men does know, or at least has the opportunity to know, and ought to know, when each man goes on duty and when he is relieved. He knows just as well as the man himself.

I submitted here a copy of a circular letter from the general manager of the Chicago and Northwestern Railroad, in which he went into details, telling them how to do this very thing.

Have you any other questions, Mr. Chairman?

The CHAIRMAN. I believe not.

Thereupon, at 11.45 o'clock a. m., the hearing was concluded, and the committee went into executive session.





HEARING

BEFORE

**COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES**

ON THE

ISTHMIAN CANAL



**WASHINGTON
GOVERNMENT PRINTING OFFICE
1906**

ISTHMIAN CANAL.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Tuesday, June 5, 1906.

STATEMENT OF MR. JOHN F. STEVENS, CHIEF ENGINEER OF THE ISTHMIAN CANAL.

The committee convened at 10.30 a. m., Mr. Hepburn in the chair.

Mr. WANGER. Your name is John F. Stevens?

Mr. STEVENS. John F. Stevens; yes, sir.

Mr. WANGER. You are chief engineer of the Isthmian Canal Commission?

Mr. STEVENS. Yes, sir.

Mr. WANGER. You were appointed when?

Mr. STEVENS. June 30, 1905.

Mr. WANGER. When did you go to the Isthmus?

Mr. STEVENS. I sailed on the 20th of July.

Mr. WANGER. And you arrived there about one week later?

Mr. STEVENS. Yes; I arrived there the 26th of July.

Mr. WANGER. And you have been in the performance of your duties ever since that time?

Mr. STEVENS. Yes, sir.

Mr. WANGER. And at the Isthmus until when?

Mr. STEVENS. I was called to Washington for consultation with the Commission, leaving the Isthmus December 12 of last year. I sailed on the return trip January 29, and I was there continuously until I came up on this trip, leaving the Isthmus, I think, on the 17th of May.

Mr. WANGER. When you first went to the Isthmus your attention, I suppose, was fully engrossed with matters of organization and preliminary work?

Mr. STEVENS. Entirely so.

Mr. WANGER. And to what extent have the provisions for housing, feeding, and sanitation progressed?

Mr. STEVENS. Do you mean what proportion to what will finally be required?

Mr. WANGER. I mean what proportion of what is essential to a vigorous prosecution of the work of construction.

Mr. STEVENS. Since the 1st of October the work has progressed very fast so far as quarters and feeding of the men are concerned. The sanitation is not in my department, but, of course, under my daily observation, and it has progressed in a very satisfactory manner, until now the conditions are, to my mind, very good, indeed. We had quite a large accumulation of men on the work—common labor-

ers and skilled laborers that there was not adequate provision for in the way of quarters and feeding. It took some little time to overcome that, owing to the lack of building material; but since the material has arrived freely we have made great progress, until now we are able to take care of the people. There are over 20,000 men on the pay rolls, although that is not the daily working force. But we are able to take care of them all in good shape, both as to quarters and feeding.

Mr. WANGER. The sick as well as the well?

Mr. STEVENS. Oh, yes. In fact, the provisions for taking care of the sick I do not think can be excelled anywhere in the world.

Mr. WANGER. Was any reconstruction of the Panama Railroad necessary?

Mr. STEVENS. Yes, sir; a very large amount of work had to be done on it?

Mr. WANGER. Did you proceed to double track the railroad?

Mr. STEVENS. Yes, sir.

Mr. WANGER. To what extent has that work progressed?

Mr. STEVENS. We have graded altogether probably about 15 miles and laid tracks on something like 8 or 10 miles that ought to be in service now. I do not know whether it is ready or not, but it was practically so when I left.

Mr. WANGER. What was the purpose in double tracking the railroad?

Mr. STEVENS. To enable us to handle the large tonnage that will be necessary to move in the excavation of the cut.

Mr. WANGER. When you refer to tonnage do you mean the regular business, as well as the work incident to canal construction?

Mr. STEVENS. Yes; the large amount of work incident to the Panama Canal, reckoning the supplies, and the commercial freight. In addition to that there is a large amount of trackage necessary to take care of the waste, the spoil, that must be moved from Culebra cut, there being no other way to dispose of it excepting to take it out and haul it away.

Mr. WANGER. Are you contemplating further double tracking?

Mr. STEVENS. Oh, yes; we are double tracking the most necessary part first—the part where the congestion was.

Mr. WANGER. Is there any congestion of commercial business at present?

Mr. STEVENS. Not the slightest.

Mr. WANGER. What facilities have you provided for landing and shipping material and freight?

Mr. STEVENS. You refer to the ocean terminals, I suppose?

Mr. WANGER. Yes.

Mr. STEVENS. At Colon, the Atlantic terminus, we have a little more than doubled the capacity in floor space of our large dock, the dock that we call No. 4, and we have made heavy repairs on it. In addition to that, we have constructed two new wooden docks at Cristobal, about 1 mile farther up, and have dredged a channel, so that we can take in ships drawing 25 feet. We have dock No. 1 at Colon, which belongs to the Panama Railroad, and which has been used for the handling of coal. That will berth one large ship or two small ones. Then we have dock No. 2, which is used exclusively for foreign line ships, the Hamburg-American Line occupying it almost ex-

clusively, and also for tramp ships. We have eight or ten different regular lines besides the tramps. Then we have the *Royal Mail* dock, which belongs to them. That is not counted in the general aggregate excepting as affecting the total tonnage of the port of Colon. Then we have dock No. 4, which will dock two large ships. That is the one that I referred to as having had its capacity doubled. Then we have the new dock, No. 12, so called, the first one, as you know, located on the old French canal, and having 25 feet of water. That is a wooden dock, is thoroughly modern, and will take care of two of the largest vessels.

Mr. WANGER. That is around Cristobal Point, on the south side?

Mr. STEVENS. Yes, sir. Then about one-half mile farther up we have another dock that will berth two large ships. In addition to that we have a smaller dock near the same point, that was built previous to the main dock, that will take two small ships, so that gives us 14—that is, it is possible for us to handle 14 ships at a time.

Mr. WANGER. How many ships could you handle when you first arrived there?

Mr. STEVENS. We could handle seven, not including the *Royal Mail*, and I have not figured that in either. We could handle eight, but one of them, dock No. 4, would be able to take care of only a very small ship.

Mr. WANGER. Then your present docking facilities are about in proportion of 12 to 7?

Mr. STEVENS. Yes; very near double; in fact, so far as utility is concerned, it is double.

Mr. ESCH. Can ships come in and land notwithstanding the various conditions of water and wind?

Mr. STEVENS. They can land at the docks at Cristobal, but there are times when they can not land at the old docks.

Mr. ADAMSON. The purpose, I suppose, is to get the docks as far inland as possible.

Mr. STEVENS. There were two purposes: There was no good docking territory left at Colon, and another reason, and a strong one, to my mind, was that I did not care to spend a great deal of money on terminals located in a foreign country, Colon being in Panama, and the other place, Cristobal, being on the Zone. It seemed to me that the true principle would be to put our money there. In explaining the fact that at times ships can not lay at Colon, it does not necessarily follow that there are storms there of sufficient energy to drive the ships out. But I presume there are storms out in the Caribbean Sea, for without an hour's warning the swell will come in and roll against the docks so that it is dangerous for ships to lie there. During the winter months up here—that is, from the middle of November until the middle of March—it is unsafe for vessels to lie there without keeping steam up. Now they can drop right around into the canal and lay there with perfect safety.

Mr. WANGER. To what depth have you dredged the channel at Cristobal?

Mr. STEVENS. Twenty-seven feet.

Mr. WANGER. What was the depth of the channel prior to the dredging operations?

Mr. STEVENS. Around the extreme end of the point was a quarter of a mile of channel that had anything from 12 to 20 feet.

Mr. TOWNSEND. I understood that there was to be built a breakwater there.

Mr. STEVENS. I suppose you refer to the breakwater from the Colon light-house across to the English light. I think that has been abandoned by all parties.

Mr. ADAMSON. If you moved your base up the canal, then the breakwater would only be serviceable for Colon itself?

Mr. STEVENS. That is all.

Mr. WANGER. What did you find the average cost of dredging to be at this canal entrance?

Mr. STEVENS. About the time I got there Mr. Maltby, who was in charge of the dredging at La Boca, had prepared two of the old French dredges—they are small machines, and in some respects antiquated, but in common with most French machinery they were first class so far as material and workmanship were concerned; and while they had been lying there some time, they were in fair shape. He put them in condition and started one at La Boca, the Pacific end, and one at Cristobal, the Atlantic end. Reckoning the expense of repairs, labor, coal, supplies, and everything, that dredging has cost about—well, not to exceed 8 cents right through.

Mr. WANGER. That is, per cubic yard?

Mr. STEVENS. Yes, sir. They took this material, lifted it up with buckets and dropped it into steam scows, scows that work under their own steam, and it was taken out to sea and dumped.

Mr. WANGER. That does not include any rock dredging?

Mr. STEVENS. Oh, no; simply mud.

You asked about the terminal. I presume you would like to know something about La Boca.

Mr. WANGER. Yes.

Mr. STEVENS. At La Boca the only dock when I arrived there was the old French steel dock, which is 800 feet long and 24 feet wide in floor space and containing two tracks. That was built some years ago; I don't know just when. It is of steel construction, and while it was intended for a good job it is of light construction, in fact the Panama Railroad Company had engines before they received the new ones that could not be run on the dock.

In addition to that dock, they had started another dock, but had suspended work for some reason or another. I went ahead and completed that, and we have it now in service. That dock will berth two of the largest ships that come there from any of the Pacific ports. In addition to that, I have just completed—there were three or four days' work to do when I left—dockage room which will give us another berth between the two, so that now, instead of berthing two ships, we can berth six, because the piece that I put in between the two docks is longer than the ordinary dock, and that, in connection with a little overplus on the steel dock, gives me an additional berth, so that we can handle five ships. And that also largely increases the storage.

Mr. WANGER. Have you strengthened the old dock?

Mr. STEVENS. It is not yet necessary.

Mr. WANGER. Do you contemplate doing it?

Mr. STEVENS. I plan doing it, and I have authority from the Commission to do so.

Mr. RYAN. Is the new dock of steel construction?

Mr. STEVENS. Yes, sir; but I have been waiting upon the decision of the much-talked-of question of the type of canal.

Mr. TOWNSEND. What difference would that make so far as the docks are concerned?

Mr. STEVENS. So far as either of the plans that are under consideration are concerned, sea level or the lock type, and so far as the facilities at the other end, the La Boca end, are concerned, the terminals of the Panama Railroad will be destroyed, including the docks.

Mr. ADAMSON. Can you efficiently and profitably work your force until the next session of Congress without a determination of the type of canal?

Mr. STEVENS. No, sir.

Mr. ADAMSON. Then you have made such progress that you will have to have that question determined before next December?

Mr. STEVENS. Yes, sir. There was a very large amount of work necessary before we could do intelligent and economical work in taking out the material in Culebra cut, owing to the necessity for the shaping up of the cut, getting in the tracks, and, in addition, getting in the quarters. But one of the principal troubles has been the lack of equipment. When I arrived there, on the 26th of July, I think there had been ordered 24 engines for the Panama Railroad, all of which they needed badly. Nothing whatever had been received in the shape of new motive power for Culebra cut proper. There had been ordered 300 small dump cars, which we have just received and put in service; and owing to the lack of equipment on the railroad I have had to use a good many on the railroad proper for handling coal and brick and things like that.

Mr. TOWNSEND. The old French dump cars were not sufficient?

Mr. STEVENS. Oh, no.

Mr. ADAMSON. If you should adopt the sea-level plan, would you have to have the cut wider at Culebra?

Mr. STEVENS. Oh, yes.

Mr. ADAMSON. And that is one feature?

Mr. STEVENS. That is one feature.

Now, talking about equipment, I arrived there on the 26th of July, I commenced ordering equipment for the Isthmus on the 29th of August, and I have kept on up to the present time. Among the first orders that I made to be filled quickly was one for 120 modern engines. Those are commencing to arrive now. There were 35 at Colon when I left there, and they expected to get the last of the 35 out last Saturday. There were 25 more that either had left or would sail from New York in a day or two. Of course it takes some few days to get them out and at work. Then I ordered 800 large flat cars for handling material. Up to the time I left we had received about 80. For the next two or three months I will have equipment enough at work, but I could not have it before. As I told the Senate committee last winter, if I had all the men and all the money in the world I could not do the work until I received the equipment.

Mr. ADAMSON. Will you not handle the spoil a little differently if one type of canal is constructed than you would if the other was constructed?

Mr. STEVENS. If one type of canal is built we can handle spoil at some places better than others.

Mr. ADAMSON. If you have to build dams you can use some of the spoil in that work, and will know it in advance; and I suppose that it can be used to widen the tracks of the railroad.

Mr. STEVENS. Of course I am using some of the material that I have been taking out on the railroad—double tracking.

Mr. TOWNSEND. Did I understand you to say that if a sea-level canal is decided upon that all the dockage at La Boca will be useless?

Mr. STEVENS. Yes, sir; for this reason, that the line of both canals as now laid out crosses the spur which runs down to the La Boca terminal.

Mr. TOWNSEND. Why were those docks put in there, then?

Mr. MANN. I suppose you are referring to the majority and the minority report of the Commission?

Mr. STEVENS. Exactly; yes, sir.

Mr. MANN. And not to any other possible plan?

Mr. STEVENS. The new dock was built or nearly completed before either report was made. You see these terminals were all right providing we should take the same alignment of canal that the French intended to use, which, to confess the truth, I never supposed would be changed.

Mr. WANGER. Then all of this work that you have done at the La Boca terminal will be available providing the French alignment is maintained?

Mr. STEVENS. Exactly.

Mr. WANGER. Is that alignment, in your judgment, practically as good as either of the alignments that have been suggested by the Board of Consulting Engineers?

Mr. STEVENS. Why, I have never seen any very great advantage in either the minority or the majority reports in changing the alignment at that end.

Mr. WANGER. The French alignment had a little greater curvature.

Mr. STEVENS. A little more curvature, a trifle longer, I presume three or four hundred feet.

Mr. WANGER. What depth of water do you have at the La Boca piers at mean tide?

Mr. STEVENS. We have less than 18 feet at low tide, which would be about 28 feet at medium tide.

Mr. WANGER. That will be nearly 40 feet at high tide.

Mr. STEVENS. Yes, sir. As to the extreme difference, we have a record of a tide in March of this year of 23 feet. That would be 20 plus 18, or, say, 38 or 40 feet. That would be the extreme.

Mr. WANGER. And it varies ordinarily from about 17 to 20 feet.

Mr. STEVENS. Yes, sir.

Mr. WANGER. Or 15 to 20 feet.

Mr. TOWNSEND. You did not finish your answer as to the advantages that the terminal which you desire to construct would have over that reported upon by either the majority or the minority committee. I think you said that the French had done something.

Mr. STEVENS. The excavations that the French made for the first 3 or 4 miles from the sea inland laid west of the Panama Railroad all the way and west of the dock. It is a trifle longer and has a little more curvature than would occur under either the majority or the minority report.

Mr. ADAMSON. In what way do those reports deal with the canal in crossing that saddle between the two hills?

Mr. STEVENS. That saddle between the two hills is about 15 feet above tide. Only one plan contemplates going between the hills. The minority report contemplates going on the outside.

Mr. ADAMSON. I wanted to ask you if the excavation in the cut has gone down deep enough to be anywhere near the level contemplated if you build a lock canal.

Mr. STEVENS. No, sir. It has gone down about 120 feet in the lowest point.

Mr. ADAMSON. Would it take you the balance of the year to get through that?

Mr. STEVENS. It will take several years; but you would not work it that way. You would not start in at one point. You see the cut is nearly 7 miles long.

Mr. ADAMSON. You do not want to confine your force to that place any longer.

Mr. STEVENS. Oh, no. When you speak about there being 100 or 160 or 300 feet of cut, that is altogether misleading. If you will let me have the map I will explain how that is. [Explaining on map.]

Mr. ADAMSON. I understood that you had cut out 150 feet.

Mr. STEVENS. The original high point was over 300 feet—330 feet. Now, if we go down 40 feet below mean sea level, there [indicating] would be the bottom of the sea level; in other words, we would have about a 205-foot cut on the extreme center line over the bottom of the sea level. [Explaining on map.]

Mr. KENNEDY. I suppose this cut is through rock?

Mr. STEVENS. Yes; in rock of different degrees of density.

Mr. ADAMSON. Is most of that volcanic rock?

Mr. STEVENS. I think so. I think the principal part of the Culebra Cut is sedimentary; that is, formed by the action of water, thrown up, and heated at different degrees of temperature.

Mr. RYAN. When we were down there we saw more than 200 locomotives, and some 40 of them were of Rogers make. Have you been able to utilize them?

Mr. STEVENS. I have utilized all of the Rogers engines.

Mr. WANGER. I would suggest that we would make better progress if we confined our examinations as we go along to particular subjects. We have had up the matter of terminals, and it would seem to me that it would be well to complete that before going to some other problem.

Mr. STEVENS. I would like to say one thing further before we leave the subject of terminals. In my judgment, it will be necessary to construct another dock at Cristobal, for the reason that the old docks, with the exception of No. 4, which is good for two or three years, are on their last legs. Dock No. 1 and Dock No. 2 are not only very inconvenient and tremendously expensive to handle freight from, but they must be entirely rebuilt within the next couple of years. As I said before, they are up in the open roadstead and on Panama territory, not the territory of the United States. It would be cheaper to build another dock up on the canal adjoining the present new ones than to keep up the old, antiquated docks. It will not cost any more to build a new dock, and then we will have something that we can use to do business upon.

Mr. WANGER. Then you think it would be better to build a new dock at the canal entrance rather than to repair the old one.

Mr. STEVENS. We have put in large yards, shops, and other plants of that kind at Cristobal, into which we are just moving now. Consequently, the expense of handling our freight is decreased by having the docks right alongside the yards. At Colon there has been in the past no well-digested plan of a yard for handling freight.

Mr. WANGER. Then, it relieves your railroad terminals considerably to have the docks further along the canal way?

Mr. STEVENS. Oh, yes.

Mr. WANGER. And the new docks are something like a mile, at least, southeast of the old docks, are they not?

Mr. STEVENS. Yes; right in here [indicating on map].

Mr. WANGER. Those that are there are about a half a mile southeast of the Cristobal point?

Mr. STEVENS. The first one is not over four or five hundred feet from the point.

Mr. WANGER. Do you think it would be advisable to build another dock half a mile or so farther on southeastward, and that that will relieve your railway terminals greatly?

Mr. STEVENS. Oh, yes.

Mr. WANGER. What has been done toward the sanitation of Colon?

Mr. STEVENS. We have filled probably about 50 per cent of the streets, brought them up to the established grade so as to give drainage; and we have cut a drainage canal clear across the island from one end to the other.

Mr. WANGER. Please indicate on the map where that drainage canal is?

(Mr. Stevens indicates on the map the location of the drainage canal.)

Mr. WANGER. The canal parallels the railroad track?

Mr. STEVENS. Yes; about three blocks back.

Mr. WANGER. Does the water flow freely?

Mr. STEVENS. Yes, sir; it has been 100 per cent more of a success than I dreamed of. The water used to stand for days after the heavy rains around under the houses. Now, inside of six or eight hours the water runs off and goes out to sea. In addition to that, we completed, some time in February, the big supply main from the reservoir which we are building back of Mount Hope down to the town. Since that time we have completed distributing mains through the streets of Colon. All that remains to complete the water plant of Colon is to make the house connections, which they are making now (that, of course, is a private matter), and to finish the permanent reservoir back of Mount Hope.

I would like to explain something in relation to the Colon water supply. I have heard a few remarks made about it in which I have not been referred to in complimentary terms. I found last year, when I got there, that some work had been done toward building a very large reservoir back of Mount Hope, in here [indicating on map].

Mr. WANGER. About 2 miles south of Monkey Hill?

Mr. STEVENS. Yes. They had planned to build a large reservoir to hold about eight or nine hundred million gallons.

Mr. WANGER. What is the quality of the water?

Mr. STEVENS. It is fine water—surface water, rain water. The basin is not inhabited, there are absolutely no inhabitants in it at all. A part of the site of the reservoir had been cleared, but no other work had been done. Since then I have been working on the dam, and have laid the mains. Of course we could not get it done in time for the dry season, so we built a small reservoir which under ordinary circumstances would have carried us through the dry season temporarily, but it did not prove to be an ample supply. So just before the water gave out we did what has been done for the last fifty years, hauled water by the water train; and the only difference to the people of Colon was that in one case the water came in the pipe, and in the other it came in the cars.

Mr. WANGER. The charge has been made that the main pipe from the reservoir broke and that then salt water was pumped from the marsh to the main.

Mr. STEVENS. There is no truth in that, not the slightest. I am very glad you mentioned that, for I have never had a chance to explain that. At the Mindi River the French started to build a diversion, called the "Mindi diversion," taking the waters of the Mindi River—

Mr. WANGER. That is on the east side of the railroad and parallel to it?

Mr. STEVENS. Yes; down here through to Admiralty Bay, and to let it come into the canal at a certain point down here [indicating]. The water of the Mindi River is perfectly pure and good, but when it gets low the tide backs in and makes it brackish. The French laid a small water main from there down to Monkey Hill, and put in a tank there, and then laid a 4-inch main to Cristobal. They used to use this water for ordinary purposes; but not for drinking.

Our new 20-inch main comes down from the big reservoir, which is a mile and a half above there, into Colon; and when the water supply from the reservoir gave out—I was there for two or three days and knew what was going on—I went to test the water at the Mindi River, drank it, but said at once that it was out of the question to attempt to drink that water, and that it could not be used. But I said it could be used for the water closets and such other purposes in Cristobal through the old French main, and we did use it for those purposes, but not for drinking, because they had plenty of rain water in tanks, and that was hauled.

Now, the point that I wish to make is that not a drop of salt or brackish water was ever pumped into the Colon main for the reason that it was physically impossible to do so; there was no connection between the pump and the main, and there never has been.

Mr. WANGER. The connection was only with the main leading from Cristobal, and that was used only for flushing and such purposes?

Mr. STEVENS. Yes. Until some way can be found to force water through the suction end of a pump it will be impossible to do what it has been claimed was done. It would be just as impossible to pump water from the Washington main into the mains of the city of Albany as it would have been down here, because there is no connection between the two. The drinking water supply was brought from 19 miles up the railroad where we have splendid water; there is no better water in the United States.

Mr. WANGER. The charge was also made that it was contemplated to build a standpipe, and after an expense of \$3,500 had been incurred in putting in material it was found that the intended site was unfit, and that it involved a greater expenditure than that amount to get the material away.

Mr. STEVENS. The original plan for the Colon water supply involved putting in a large tank at Monkey Hill, about where the old French one was, only on a larger hill—a 500,000 gallon tank. The water was to be brought down and pumped up, and from there given a head of about 135 feet. In addition, they had figured on putting another tank of smaller capacity in the town of Colon; but to my mind that was unnecessary, because the one tank at Monkey Hill would give all the head necessary. Now, assuming that we build a lock canal, and we will be at work seven or eight years, we must have a water supply there at Gatun. We had accumulated a few carloads of sand and crushed rock and dug some holes in the ground 5 or 6 feet deep—probably 15 or 20 of them—and probably we have spent altogether three or four hundred dollars; but I immediately said that I did not believe we needed the second tank at Colon.

I think the chances are at least even that we will build the lock canal, and we must establish a large town for the Gatun improvement. We will probably have 4,000 or 5,000 people there. Then we must have a tank there. Therefore, to avoid the expense of providing another tank at Gatun, I stopped the work on that tank at Colon. I am going to reserve that for Gatun. If a lock canal is decided upon, I would immediately put up the tank at Gatun.

Mr. WANGER. Prior to the report of the Board of Consulting Engineers there was no proposition forcefully presented for a dam at Gatun, was there? I mean that the plans which had been presented, either officially or in such way as to give weight to them, did not contemplate such an erection; and therefore prior to that time your attention was not directed to the necessity of having your main water supply at Gatun?

Mr. STEVENS. That is the idea. You see, under any plan whereby you dredge from Colon clear through to Gamboa—a sea-level proposition, for instance—there will never be any very large number of people living along the line of the canal. The people who operate the dredges will live on their own ships. There was not any strong recommendation for a dam at Gatun until the recommendation of the board.

Mr. WANGER. Are there any other problems connected with the Colon terminal?

Mr. STEVENS. I might say, in explanation, to the gentleman who asked me about a breakwater at Colon that that was talked of last year. That was from this point here [indicating] across to here [indicating on map], and inclosing this entire area. Now, both the minority and the majority members of the committee recommended that a breakwater be built along here [indicating on map], a small breakwater here, and another one here. It is shown by these lines [indicating]. But there is a question whether that breakwater will be needed; that, in other words, it would be better to dredge this channel here [indicating] and then wait a year or two to see whether it will stay open without these breakwaters, which can be built later.

Mr. RUSSELL. Mr. Stevens, might I ask you which type of canal you recommend?

Mr. STEVENS. I am in favor of the lock type.

Mr. RUSSELL. Why?

Mr. STEVENS. Because I think it is a better canal.

Mr. RUSSELL. For what reasons?

Mr. STEVENS. Because it will handle ships as quickly—it will handle them more safely; and because it will cost the United States Government about \$2,300,000 less a year to maintain owing to the difference in capital account.

Mr. RUSSELL. You say that a lock canal will handle more ships?

Mr. STEVENS. It will handle as many; its capacity is as great.

Mr. RUSSELL. More cheaply?

Mr. STEVENS. I think so.

Mr. RUSSELL. Why? Understand me, I am not endeavoring to argue with you, because I do not know anything at all about it.

Mr. STEVENS. In computing the cost of the canal you must take into account the interest charged. The figures on the face, which I dispute, show \$107,000,000 excess cost of a so-called sea-level canal. I think it will be nearer \$140,000,000; I am absolutely sure it will be \$120,000,000. At 2 per cent that is a \$2,400,000 handicap that you will have to pay every year, and somebody has got to put it up.

Mr. LOVERING. And that is so many years before it is available?

Mr. STEVENS. Yes.

Mr. ADAMSON. Is not that compensated for by greater expense in operating account?

Mr. STEVENS. No, sir; there will be a net difference of \$2,400,000 a year.

Mr. ADAMSON. How many locks do you contemplate?

Mr. STEVENS. Three on the north end and three on the south end.

Mr. ADAMSON. It will cost something to keep them in operation?

Mr. STEVENS. Sure; but that is allowed for in these figures.

Mr. ADAMSON. How long do you estimate it will take to open and shut them when vessels are passing through?

Mr. STEVENS. An hour or an hour and a half.

Mr. RICHARDSON. You say you can afterwards change a lock canal into a sea-level canal?

Mr. STEVENS. Exactly.

Mr. ADAMSON. Would it not cost just as much to do it now?

Mr. STEVENS. No, sir; it would not, in this way: This is a long story, and I think I can at least make my position clear better by your allowing me to talk a few words without asking questions. I went down there a sea-level canal man. I have been an engineer for a long time. I have had over thirty years of practical experience, and I have been a student, and am yet, and there have been but few descriptions or articles written about the Panama Canal from the time of Philip of Spain that I have not read. Lots of it I have forgotten, and I may say I am glad of that. Philip issued an edict three hundred years ago that if any man mentioned the Panama Canal in his hearing he would cut off his head, and I feel like that myself sometimes.

I went down there with a predilection in favor of a sea-level canal, with a picture in my mind of a wide expanse of blue, rippling water

and great ships plowing their way through it, like the Straits of Magellan, minus the current, and I said to myself, "It is only a little more depth to dig and a little more money, but we can do it." Before I had been down there long I saw it was a different proposition—different from the Isthmus of Suez. I had not taken into consideration before the fact that there was a mountain range there, and that there were streams there with 100,000 cubic feet of water to flow into it. We have found there an aggregate of something like eighteen or twenty streams pouring into that sewer down below the Chagres River. I had not taken into consideration the currents, with all the difference of water they would make in a narrow canal.

In a general way I understand the operation of a lock, having been connected with the Great Northern Railway for many years, with interests largely connected with the Sault Ste. Marie Canal, and I had as an outsider and spectator watched those locks. In fact, twice, taking a vacation, I went out there, and was there a week at a time twice and watched the operation of that canal.

But after looking the ground over on the Isthmus, I said to myself that I did not believe in a sea-level proposition for one or two generations. Then I began to study the lock proposition, and the more I studied it the more I became convinced of its wisdom.

The one great reason for the theoretical preference for a sea-level canal is that there is an entirely erroneous notion of what is proposed for a sea-level canal under the plan proposed. If, as I said, we had the prospect of a wide canal on the Isthmus of Panama, and we could get it in a reasonable time, I would be heartily in favor of it.

Mr. WANGER. What do you mean by a wide canal?

Mr. STEVENS. I mean a wide canal instead of a 150-foot canal; a width in some cases only one-half more than the width of the vessel, with only 4 feet of water under her keel. If we could have a canal 500 feet wide, with 45 feet of water, that would do.

Mr. ADAMSON. Would that be completed with a billion dollars?

Mr. STEVENS. I do not think it could be.

Mr. KENNEDY. Through a canal of the kind proposed, a large ship could not run with its own power?

Mr. STEVENS. I do not believe it could.

Mr. WANGER. You said a canal less than half the width of the vessel. You meant a canal less than double the width of the vessel?

Mr. STEVENS. Yes; I meant a ship would occupy about one-half of the space. It has been admitted by every one of the expert engineers—I do not pretend to be an expert hydraulic engineer myself—but I do not suppose, with the amount of water that would be let into the canal, you could prevent currents from running through the crooked part of the canal there, and it is very crooked, running approximately 3 miles per hour, or 2.64 miles.

Mr. ADAMSON. Do you mean to have wide places, in the nature of side tracks on a railroad?

Mr. STEVENS. That would have to be allowed for, although it has not been allowed for in the plans and estimates.

Mr. ADAMSON. Is your plan for a lock canal that way?

Mr. STEVENS. The lock canal is wide enough for passing, and throughout at least 80 per cent of it the ships can pass practically at full speed.

Mr. ADAMSON. I want to ask you about the Gatun dam. Have you found bed rock at Gatun?

Mr. STEVENS. We have found rock.

Mr. ADAMSON. How far down?

Mr. STEVENS. From 10 to 15 or 20 feet below the surface; from there as far as we have gone. I have gone 60 feet below the level of the sea.

Mr. ADAMSON. What have you found across the Chagres Valley?

Mr. STEVENS. We have found the same strip across the Chagres Valley and across the old channel of the river. With the exception of two places, we found this same rock so far as we have gone.

Mr. WANGER. The rock to which you refer has also been called indurated clay?

Mr. STEVENS. Yes, sir.

Mr. ADAMSON. Do you intend to build a dam across a place like that, or laying an impenetrable veil down to bed rock?

Mr. STEVENS. Yes, sir. It is material amply strong enough in every respect.

The CHAIRMAN. Mr. Stevens, have you answered fully to your own mind this question of why you have preferred the lock canal?

Mr. STEVENS. No, sir; I have not answered it fully.

The CHAIRMAN. You have been carried away by questions?

Mr. STEVENS. Yes. I believe, as I said before, the lock canal will handle ships quicker. It has been demonstrated by figures by all these maritime people, by these engineers at least, that the sea-level canal perhaps will take the smallest class of ships and will probably put them through a little quicker; but as to medium-sized ships there will be no difference. As to the larger ships, the lock canal will put them through faster than a sea-level canal. With a sea-level canal it means that no ship can move on her own steam or have steerage way with less than 5 or 7 miles' speed, which would be, to my mind, in that canal, with submerged banks and very largely rock, a dangerous and impossible performance. In fact, I believe that the largest ships that we have now would never get through. They would be in there a day or two, and after a while pull out and go around the Horn.

I do not see how you can put a ship of 80-feet beam through such a channel and around those sharp curves. It is a known fact that a ship does not steer well in shallow water. It is very hard to control a ship in shallow water. The chief engineer of the Suez Canal admits that as a fact. You will find it in his statement in the record of the Consulting Board.

I came up to New York from the Isthmus on a little Panama steamship the other day, which is less than 300 feet long. When we got up to Barnegat—you know we parallel the coast along Barnegat Bay for 40 miles—I noticed the ship then—and she is a splendid little ship, quick and active as a bird—and I noticed she was not behaving well, and I said to the captain, "What is the matter? What is the matter with your quartermaster? You are not steering straight along the coast." He said, "Do you not know that a ship in shallow water does not steer well?" I said, "Do you mean to say that that man can not steer well without going 40 or 50 feet out of his course?" He said, "It is a fact that a ship will yaw in shallow water."

With ships of eighteen or twenty thousand tons, like the *New York* and *Minnesota*, I do not see how you can go through the ship canal and float them, and I knew much about the designing of those ships years ago. They have 76 feet 8 inches beam and are 630 feet long from water line to water line and draw 35 feet fully loaded.

Mr. TOWNSEND. How will your lock canal remedy that?

Mr. STEVENS. That would be remedied in a lock canal, because in that case we would have a wide channel. We have from Gatun, through this large lock here, until you get away up here [indicating on map]—you have a thousand-foot channel, a thousand feet in width, with water nowhere less than 45 feet. All this white here [indicating on map] is lake. Wherever it is colored white it means 45 feet of water or more. Wherever it is colored blue it is less than 45 feet.

Mr. ADAMSON. You have never experimented anywhere in lifting a ship 800 feet long and 80-foot beam up to an 85-foot level?

Mr. STEVENS. No, sir. We only figure on a 28-foot lift in these locks at one time. There are three tide locks.

Mr. ADAMSON. They are congregated, are they not?

Mr. STEVENS. No, sir. Only one at a time. You have only to eat one meal at a time, even if you take three meals a day.

Mr. FRED C. STEVENS. What is the lift of the "Soo" lock?

Mr. STEVENS. About 20 feet.

Mr. FRED C. STEVENS. Then you would only lift it about 8 feet more?

Mr. STEVENS. Yes, sir.

I would like to explain that before I get away from it. The difference in cost we have figured—I say "we;" we give competent authority as near as we can—we have figured that in fifty years there may be from thirty-five to forty millions of tons brought in through this canal; but we know absolutely beyond question that we have enough water for lockage purposes to handle from sixty to seventy millions a year under the present plan, and that can be augmented by the addition of more storage facilities at Alhajuela and elsewhere when the time comes when the lock canal does not give sufficient accommodations to handle the tonnage, either by reason of lack of water or lack of size; and long before that time—we will come to that gradually, in generations—the difference in the cost of construction of the lock and the sea-level canal at compound interest at 2 per cent added to the difference in cost of operation in fifty years will furnish a fund that will be sufficient to transform the lock canal into a true sea-level canal of ample capacity, a canal entirely different from the one now proposed.

Mr. ADAMSON. If that is done you would encounter the same difficulties you have been describing, would you not?

Mr. STEVENS. I say a true sea-level canal, a good wide one. One hundred and fifty million dollars for fifty or one hundred years at compound interest would be a great deal of money.

One of you gentlemen asked me a question about Gamboa dam.

Mr. TOWNSEND. I would like you to tell what the effect of the Chagres River is going to be on a lock canal.

Mr. STEVENS. To my mind there is only one problem of engineering down there. Of course, these are gigantic matters as to handling, but they are not mysteries. The one great problem in the construc-

tion of any canal down there is the control of the Chagres River. That overshadows everything else. The rest, to my mind, are details in comparison. The line of the canal under either plan follows the valley of the Chagres River. There you have some 30 crossings from the bay here [indicating on map] at Colon, here, to this point. Here is the valley of the Chagres. Going upstream—

Mr. WANGER. The words "here at this point," are not very definite on the notes.

Mr. STEVENS. That is at Gamboa. It swings sharply to the east at right angles and goes up to the headwaters here [indicating] I do not know how many miles; then it follows up the valley of the Obispo and its waters until it reaches the summit here [indicating], and three valleys leading into the Little Rio Grande stream. Now, while there are quite a number of streams here [indicating], they can all be taken care of without a great amount of trouble and expense. But the main stream to be considered is the Chagres River.

There have been records, since intelligent records have been kept, that the flow here in Gamboa in the driest season known has gotten down to 388 cubic feet per second. Bear that in mind for the sake of contrast. There are records here at Gamboa where the known discharge through the gorge here [indicating] at flood times has been up to 60,000 cubic feet per second. There are evidences of records, estimated by very careful lines and high-water marks, that in 1879, by tradition—and it is hardly fair to say tradition, because it is no further back; but by evidences—I do not know what they are; I take my authority from General Abbot—but it appears one discharge might have occurred here [indicating] at 136,000 cubic feet per second.

Mr. WANGER. That is at Bohio?

Mr. STEVENS. Yes, sir. What I want to bring out is the fact of the great difference between high water and low water discharge in this river.

Of course, any such body of water as twenty-five or thirty thousand feet discharge immediately into the canal, sea level of otherwise, right here at Gamboa, would be absolutely prohibitive. In the first place, you could not navigate, and, in the second place, it would tear the canal all to pieces.

Mr. ADAMSON. With a width of 500 feet you could?

Mr. STEVENS. No, sir; you could not at all.

Mr. WANGER. Let me ask you as to the actual measured discharge at Gamboa. Was it not 58,720 feet per second in 1890?

Mr. STEVENS. That is my recollection.

Mr. WANGER. And the highest estimated discharge in the flood of 1879 was 79,000?

Mr. STEVENS. That was the actual measure. But then they have records—and General Abbott is pretty good authority—they have records to the effect it might have gone to 136,000.

Mr. WANGER. Did not he say that was at Bohio?

Mr. STEVENS. I am not certain about it.

Mr. WANGER. I think you will find it in his report in connection with the Board of Consulting Engineers.

Mr. ADAMSON. Is it not the plan to excavate the Chagres River for a mile and let it come down to the level?

Mr. STEVENS. No; I would have the lake extending half the distance, and—

Mr. TOWNSEND. What is your plan?

Mr. STEVENS. The only way that is feasible is to build a dam where there is a very excellent location, and by going down 50 feet—and by the way, the valley of the river there is 50 feet above the sea level, and it so happens that by boring down 50 feet you strike rock. By building a dam there 220 feet long from mountain to mountain, and going down to this rock, it is possible to impound, as shown here colored in blue, all the waters of the Chagres River up here for 25 miles, probably, or 20 miles at least. That dam would be 180 feet high.

The CHAIRMAN. Mr. Stevens, the hour has arrived when we must adjourn. When would it suit you to resume your statement?

Mr. STEVENS. At any time.

The CHAIRMAN. What time shall we take a recess to?

Mr. MANN. Would it be more pleasing or agreeable to you to go ahead this afternoon or to-morrow?

Mr. STEVENS. I can suit your convenience. I am not in very good shape physically. I was sick all night.

Mr. MANN. Maybe you would prefer to go over until to-morrow?

Mr. STEVENS. No; I may be dead by that time. I am at your orders.

The CHAIRMAN. Very well; we will then take a recess until half past 2 this afternoon.

AFTER RECESS.

The committee met at 2.30 o'clock p. m., pursuant to adjournment.

STATEMENT OF MR. JOHN F. STEVENS, CHIEF ENGINEER ISTHMIAN CANAL COMMISSION—Continued.

Mr. WANGER. How long do you estimate it will take to build the locks and dams called for by the lock project?

Mr. STEVENS. I think it is possible to build them in six years, although I have always figured on seven or eight years in order to be conservative and safe.

Mr. WANGER. Could that time be reduced any if it became necessary to build the Sosa dam?

Mr. STEVENS. The Sosa dam and the other two dams are small and they would not enter into the calculation. In fact, the next few months I hardly expect to do very much, if anything, on them.

Mr. WANGER. Could you carry on all those operations simultaneously?

Mr. STEVENS. Yes, sir.

Mr. WANGER. How long a time do you estimate for completing the excavation of the Culebra cut under the lock plan?

Mr. STEVENS. It should be done in practically the same length of time—to exceed six years.

Mr. WANGER. Which do you think involves the greater uncertainty,

the excavation at Culebra or the building of the Gatun dam and locks?

Mr. STEVENS. In point of time?

Mr. WANGER. Yes, sir.

Mr. STEVENS. I do not think there is any great uncertainty about either. As a matter of fact, the bulk of the work, the concentration of the work at the dam and the locks, particularly the locks, is much worse than the Culebra cut; but, on the other hand, it is work that you can do at night to very good advantage, whereas in the Culebra cut you can not get the same amount of efficiency at night as in the daytime. There are about 2,500,000 yards of material to dig out for the locks at Gatun, but it is a very short haul, not to exceed 3,000 feet, the extreme haul, and nearly all of it can be handled by steam shovels; and it is not necessary to take out all of that excavation before you commence the masonry on the lock walls and chambers. So in figuring you must figure when you have half the excavation taken out then you would be ready to commence the masonry. Although I confess some of the engineers do not agree with me, I think the Gatun dam and locks can be built in practically the same time as the Culebra cut under the lock plan. I know I am alone in that opinion on the Commission.

Mr. WANGER. That project contemplates a usable length of 900 feet in each lock?

Mr. STEVENS. Yes, sir.

Mr. WANGER. And 55 feet additional for extra safety gates?

Mr. STEVENS. Yes, sir.

Mr. WANGER. How much space is required between lock chambers or at the termini in addition?

Mr. STEVENS. At the termini the walls that have been estimated for are 1,200 feet outside of the gates.

Mr. WANGER. On each side?

Mr. STEVENS. Yes, sir.

Mr. WANGER. Making a total length of what for the Gatun lock structure?

Mr. STEVENS. The whole thing?

Mr. WANGER. Yes, sir.

Mr. STEVENS. I do not now recall what that is. You understand the one approach—the low approach, for instance—at Gatun at the north end, these walls [indicating on map] will simply be the walls of the canal proper, so that really there would be about 3,700 or 3,800 feet. I do not recall the exact figures.

Mr. WANGER. Have you definitely ascertained that there is a suitable foundation all that length?

Mr. STEVENS. Yes, sir.

Mr. WANGER. At the time of the visit of the engineers the walls had not been extended to establish that fact?

Mr. STEVENS. No, sir.

Mr. WANGER. Since then you have determined that fact?

Mr. STEVENS. Yes, sir. I took a strip about 600 feet in length, making the center of it about the side line where the present locks will be built, and I took a series of three, and in some places four, holes—110 holes, 3,700 feet in length—and I found, after the strip of clay on top, from 10 to 20 feet of this indurated rock, in most

eases 60 feet below sea level. The lower I went down the deeper I naturally went with my borings, so as to be certain that I had the rock under my structure. It is possible there may be a great deal more, but I stopped when I got there, because I knew that was all I wanted.

Mr. WANGER. You know there is that much, but you do not know how much more?

Mr. STEVENS. No, sir.

Mr. WANGER. The entire lock structure would be founded on the same indurated clay?

Mr. STEVENS. Yes, sir. I know the same material crops out on the Chagres River and along the line of the old French excavation and above the banks here [indicating on map] clear down to the mouth of the Mindi, something like 5 miles, and at Mount Hope or Monkey Hill, so called. I had a drill there—a 6-inch drill—and I started to drill to see what was under it, thinking possibly that I might strike an artesian well. I think we will in the future. And I found indurated clay of the same formation and the same belt, and I went 415 feet without any change in the formation before I got through.

Mr. TOWNSEND. Is the indurated clay impervious to water?

Mr. STEVENS. Yes, sir.

Mr. ESCH. Is that of the same character as in the Culebra Cut?

Mr. STEVENS. No, sir; it is entirely different.

Mr. WANGER. Is that the same material that was in the dry dock at Cristobal?

Mr. STEVENS. Yes, sir. It is within half a mile of the Cristobal dry dock, right on that flat, near the little station.

Mr. WANGER. The walls of the dry dock have been exposed for a great many years?

Mr. STEVENS. Yes, sir. I do not know just when it was built, but I think it must have been built fifteen or twenty years ago.

Mr. WANGER. Are they still firm?

Mr. STEVENS. Yes, sir. There is no facing to it; it is simply the natural rock.

Mr. WANGER. You are doubtless familiar with the project of Mr. Lindon W. Bates?

Mr. STEVENS. Yes, sir. I made a study of it last year.

Mr. WANGER. Do you see any advantage in his proposition to locate a lock at Boca Mindi?

Mr. STEVENS. No, sir; I never have. In fact, I never have been thoroughly converted to the belief that we should build within reasonable shooting distance of ships. In that respect you may recall the minority report as to the La Boca proposition. I dissented from that opinion.

Mr. WANGER. Do you regard the Gatun locks as being too near shooting distance?

Mr. STEVENS. I am not a military man, but I should say no. They are 7 or 8 miles away, and they are out of view. I suppose they could find them with range finders.

Mr. WANGER. Under the lock project the Gatun dam would provide a lake of what area?

Mr. STEVENS. About 118 to 120 square miles, as near as we can figure it.

Mr. WANGER. Would there not be a good deal of evaporation from a lake of that size?

Mr. STEVENS. Yes, sir; a tremendous evaporation, almost directly in proportion to the area exposed.

Mr. WANGER. If the summit level of the canal was but 60 feet, would there not be a good deal less evaporation?

Mr. STEVENS. There would be less evaporation in proportion to the less number of square miles of lake exposed.

Mr. ADAMSON. Have you formed any opinion as to whether the inflow of the Chagres and all those other streams would equal the evaporation from the lake?

Mr. STEVENS. Yes, sir. Those calculations have all been worked out. They are shown in the committee's report, the loss of water from all sources, leakage, power purposes, evaporation, and, I think, seepage, and on that was based the calculation that there is plenty of water in the Gatun lock to take off between sixty and seventy million tons a year.

Mr. ADAMSON. We rode around the canal from Bohio in a boat, and my recollection is that there was another considerable river on the left?

Mr. STEVENS. That is the Trinidad. That comes in here [indicating on map] and the Gatun is here. [Indicating on map.]

Mr. WANGER. About how much less time would it take to construct the locks and dams for a 60-foot summit level canal?

Mr. STEVENS. For 60 feet you would take out one lock on each side. There would be no difference in point of time, but instead of having three locks you would have two, or instead of six you would have four on the twin bases.

Mr. WANGER. You would require over a thousand feet less of foundation work?

Mr. STEVENS. Yes, sir. You would shorten it just that much. Theoretically it would shorten the length of time one-third, two and one-half years, practically it would not.

Mr. WANGER. The 60-foot level would require the building of the Gamboa dam?

Mr. STEVENS. Yes, sir. You see, at this point here [indicating on map], where the Chagres strikes into the valley, it is + 50—that is, the elevation of the valley is 50 feet above sea level. If you built the locks on the summit level here [indicating on map], 60 feet, you would practically have 10 feet of water, and with the floods coming down the Chagres that would not do at all. You would have to hold this water back, so as to get deep water here [indicating on map].

Mr. WANGER. It would take, in your judgment, how long to build the Gamboa dam of masonry?

Mr. STEVENS. From three to five years.

Mr. WANGER. That would be simultaneously with the building of the locks?

Mr. STEVENS. Yes, sir.

Mr. ADAMSON. If you should build simultaneously, could you get the requisite material from the excavation in the cut?

Mr. STEVENS. For the Gamboa dam?

Mr. ADAMSON. Yes, sir.

Mr. STEVENS. I think so; yes, sir. But you understand that it is not proposed to build an earthen dam at Gamboa.

Mr. ADAMSON. I understand; but in the Culebra cut there is stone?

Mr. STEVENS. Not good stone for the concrete. We would have to have that brought in, although I am not certain. I have selected a place to get the rock for the Gatun work, if we do that.

Mr. ADAMSON. I am talking of using the same thing twice: where you take it away, use it somewhere else.

Mr. STEVENS. But the majority of the rock in the Culebra cut is not good masonry rock. It is not a good grade. It is very hard and expensive to segregate it from the great mass.

Mr. WANGER. How is the rock at Bohio?

Mr. STEVENS. It is not good. It is too soft.

The CHAIRMAN. The lake or basin there resulting from the building of the Gatun dam, would it fill in a single season?

Mr. STEVENS. Yes, sir; it would consume a year, taking the wet and dry seasons, to fill it.

The CHAIRMAN. With that 85-foot dam, using that lake for navigation purposes, where you begin excavation in order to get sufficient depth, at what point?

Mr. STEVENS. At a point near San Pablo, where the Panama Railroad crosses the Chagres River, right here [indicating on map], and here [indicating on map]. At those two points you would have more than 45 feet of water. The first dike is 25 miles, perhaps, and from there on [indicating on map] the excavation would be for a distance of from 25 to 27 miles.

Mr. ADAMSON. Is there any saving in excavation at all in favor of the lock canal?

Mr. STEVENS. Yes, sir. The difference between Bohio and Gatun, that 8 or 9 miles [indicating on map], there is a saving of \$11,000,000.

Mr. ADAMSON. Of excavation?

Mr. STEVENS. Yes, sir.

The CHAIRMAN. What is the total amount of excavation for the canal with the 85-foot level?

Mr. STEVENS. Nobody can say until we have had time to readjust our cross sections to the new plan. It has been stated variously from 46,000,000 to 53,000,000 yards. I think myself it is something under 50,000,000 yards.

The CHAIRMAN. What will be the total excavation, according to the sea-level plan?

Mr. STEVENS. Through the Culebra cut there are from 110,000,000 to 112,000,000 yards.

The CHAIRMAN. And what would be the balance?

Mr. STEVENS. The balance has been calculated as between 260,000,000 and 280,000,000 yards. I do not think anybody knows.

The CHAIRMAN. There would be a difference of 235,000,000 cubic yards between the two schemes?

Mr. STEVENS. Yes, sir; possibly 220,000,000 yards would cover it.

The CHAIRMAN. Under favorable circumstances in the Culebra cut what amount of excavation can you do in a day of twenty-four hours day after day?

Mr. STEVENS. It depends altogether on what elevation you are working at. Of course you understand that the higher up you are the cheaper and quicker you can handle the material. In the dry season it is much dryer, and therefore it is easier to handle the material. When you get further down the rock is harder and there

is no earth at all. Then, again, at the top you are working in a wider space, and you have more chance to handle yourself—that is, the men have better opportunity to work, and the cars going out to the dumping ground are lighter, and as a consequence there is less cost for transportation. I have always figured that we should handle from thirty to forty thousand yards a day easily.

Mr. ESCH. How many steam shovels can you work?

Mr. STEVENS. That is something we will have to prove.

The CHAIRMAN. That will be about 1,000,000 yards a month?

Mr. STEVENS. Yes, sir; I had hoped to do that. The Chicago drainage canal, which was very largely rock or alluvial drift, averaged about 500 yards per shovel, but they did not do all their work with shovels. They handled a great deal of it with carriers. We have not the advantage they had. Out of 50,000,000 yards to be taken out of Culebra Cut, I do not think more than 2,500,000 yards can be disposed of without hauling. If we put the waste back in a place where the water can get at it, it is coming back into the canal system. It takes a large area to pile 1,000,000 yards.

Mr. ADAMSON. And you will aid sanitation by doing that?

Mr. STEVENS. Yes, sir.

Mr. ADAMSON. I would like to ask you if in the aggregate dams built with the rocks will be compensated in cost by the saving in excavation?

Mr. STEVENS. Yes, sir; and a great deal more. I just mentioned that difference in the two estimates between the dam at Bohio and the dam at Gamboa, at \$11,000,000.

Mr. KENNEDY. The problem of taking care of the Chagres River must be quite different under these two different plans?

Mr. STEVENS. Yes, sir; entirely so.

Mr. ADAMSON. Has anybody asked you as to the material for the construction of these great locks, will it be concrete with the necessary cement covering?

Mr. STEVENS. Concrete.

Mr. ADAMSON. Entirely?

Mr. STEVENS. Yes, sir; our expert lock man may want to use bricks under the lock floors. I do not know about that.

Mr. ESCH. How many cubic yards of soil could you use on the Gatun dam?

Mr. STEVENS. There is no limit; about 21,000,000 yards according to the design.

Mr. ESCH. That would take care of a good deal from the Culebra Cut?

Mr. STEVENS. Yes, sir; the majority of that is to be built by sluicing. The plan proposed is this: All this material in here [indicating on map] is very nice material.

Mr. WANGER. Between the Gatun dam—

Mr. STEVENS. And the sea. That material we would dredge here [indicating on map]. The old French canal is up here [indicating on map], and we could get this out [indicating on map] in three weeks' time. Dredge the material out here [indicating on map], and drop it right here [indicating on map] at the foot of the dam. There [indicating on map] we would repump it right into this dam, and let the water run away and compact the material. At the same time we would undoubtedly bring down material from Culebra cut,

running out on this dump [indicating on map], and let the water soak through, and the whole thing would become compact.

Speaking about the immense amount of material, I figure on from 100 to 125 carloads per day needed of material to build the locks. That is quite a traffic in addition to the commercial and ordinary business of the railroad, due to the amount of waste that is to be hauled from Culebra cut. I would not haul half of it over the railroad. I have a location on the coast where there is as fine rock for concrete as I ever saw, and there is 60 foot of water. That is about 20 miles. I would spout the material right into the scows, and then take the tugs right up the canal and drop it right at the Gatun locks. In other words, it will eliminate entirely the question of railroad transportation to the locks. It is the prettiest place I ever saw.

Mr. ADAMSON. Would it not be equally as easy to reach the other locks?

Mr. STEVENS. Yes, sir. Two of the locks, under this plan, are right at deep water now. The only question remaining is sand when you get here [indicating on map], on the Chagres River, way above Gatun. There is one deposit of sand on the beach near Panama. I have kept the location in mind. There are about 3,000,000 cubic yards of splendid building sand. It is possible we may have to haul that on cars to Gatun, but I think we can pump it with hydraulics right into the scows, and then into the dump cars, and it will not cost but a very few cents per yard.

The CHAIRMAN. How much of the area of overflows belongs now to the United States?

Mr. STEVENS. There has never been a close calculation made, but I should say between 20 and 40 per cent.

The CHAIRMAN. What do you estimate the damage to the remaining portion would cost?

Mr. STEVENS. I do not know, but I do not think, taking the amount of acreage there—50,000 acres—it is more than from \$300,000 to \$500,000.

The CHAIRMAN. How many acres would that cover?

Mr. STEVENS. I figure on the basis of \$7 an acre; that is, between 50,000 and 60,000 acres. Some gentlemen have overlooked, I think, the fact entirely that at Gatun the land on which the houses are built belongs to the United States, although the houses belong to private individuals. I have bought up unexpired leases of a number of houses of about the same class in the last six months and destroyed them, and I have counted the houses in Gatun, and there are approximately 58 where the Government owns the land now. Those 58 houses would not cost on an average more than \$125 to \$150 apiece, and the people would be very glad to take that amount of money and get out. So six or seven thousand dollars would clear out that apparently very large town, and it is the biggest one—

Mr. ADAMSON. What has become of the claim of the old Spanish governor who claimed that he owned 28,000,000 acres?

Mr. STEVENS. I do not know. There is a great amount of land in controversy. We think it belongs to us, and it is claimed by us, and so I determined to ascertain what we do own and what we do not own, and I had the legal department bring some suits in ejectment, and we are carrying them through now. We have tried several cases, and in every case we have won. There was one case involving the

whole town of Empire—about 1,000 acres of land—and we have a decision finally from the supreme court that the whole territory belonged to the Panama Railroad. All that money for the leases of houses should have gone to the Panama Railroad for the last ten or fifteen years. Now we have the land and the title to it.

Mr. TOWNSEND. Do you not have any statute of limitation?

Mr. STEVENS. No, sir.

Mr. WANGER. On whose land is the church at Gatun?

Mr. STEVENS. On the land of the Panama Railroad. After you get south of Gatun, at the first little bridge about a quarter of a mile, about one-third of the distance from the town, from the railroad station up to the long bridge across the Gatun River, belongs to the United States, and then Stilson comes in there. He lives there on our land, and Stilson owns a long strip that we would have to acquire.

Mr. TOWNSEND. You could not get his land for \$7 an acre?

Mr. STEVENS. Yes, sir; it is jungle land.

Mr. TOWNSEND. He is quite a wealthy man?

Mr. STEVENS. Yes, sir.

Mr. WANGER. He has a pretty large ranch?

Mr. STEVENS. Yes, sir.

Mr. WANGER. Do you know how many acres he has in cultivation?

Mr. STEVENS. I do not think he has any.

Mr. WANGER. I mean for grazing.

Mr. STEVENS. The main grazing ground is over the hill and back to the sea, a great part on Panama Railroad land.

Mr. WANGER. Mr. Mann and I walked across it.

Mr. STEVENS. I do not know what part you were on, but I would say it was on the Panama Railroad.

Mr. WANGER. We went from the Gatun station to the engineers' camp.

Mr. STEVENS. You were on the Panama Railroad land. The only land Mr. Stilson owns is up the valley, away off to the east and south-east.

Mr. WANGER. Will Matachin be submerged by the 85-foot-elevation canal?

Mr. STEVENS. Yes, sir; the whole town of Matachin.

Mr. WANGER. And the railway station at Empire?

Mr. STEVENS. Oh, no. That is away above the elevation. You see, it is a very little raise from Colon up to Matachin. There is only the natural raise of the valley, about 50 feet at Gamboa. The tide ebbs and flows there only about 18 inches.

Mr. CUSHMAN. What is the difference in the rise and fall on the two oceans?

Mr. STEVENS. We have the record of last March—23 feet at La Boca.

Mr. WANGER. The difference between tides?

Mr. STEVENS. Yes, sir.

Mr. WANGER. What was it at Colon during the same period?

Mr. STEVENS. We did not have any high tides in March; something like 18 inches. There is about 23 feet difference in the tides at La Boca.

Mr. ADAMSON. Twenty-three feet difference in mean tides?

Mr. STEVENS. Yes, sir.

Mr. CUSHMAN. On the Atlantic side the tide rises above and falls below mean tide about how far?

Mr. STEVENS. About one-half of 18 inches, say, 10 inches.

Mr. CUSHMAN. Ten inches above and below?

Mr. STEVENS. Yes, sir.

Mr. CUSHMAN. Then, on the other side, on the Pacific coast side, it rises—

Mr. STEVENS. One-half of 23 feet, $11\frac{1}{2}$ feet.

Mr. CUSHMAN. Above and below?

Mr. STEVENS. Yes, sir.

Mr. GAINES. In a sea-level canal what effect would that difference in the tidal movement on the Pacific coast side and the Atlantic coast side have on the current through the canal?

Mr. STEVENS. It would make the current for two or three hours twice a day so you could not possibly navigate. That is why the lock is interposed at that point.

Mr. CUSHMAN. That is, there would be at least one lock in a sea-level canal? •

Mr. STEVENS. Yes, sir; part of the time you would lock the ships out. A tidal lock, by the way, is very much more difficult to operate than a stillway, owing to the rush of the water through when the gates are opened.

Mr. ADAMSON. Would not a tidal lock operate to keep the drift from coming in?

Mr. STEVENS. I do not think so. I think you could take men and keep it clear. You mean the silt?

Mr. ADAMSON. Yes, sir.

Mr. STEVENS. That is a proposition, nobody knows until they try it.

Mr. WANGER. At the Gatun dam you have two depressions?

Mr. STEVENS. Yes, sir; two depressions in the river.

Mr. WANGER. One is about 204 feet deep?

Mr. STEVENS. Yes, sir; and the other about 258 feet.

Mr. WANGER. And there is some water flowing at different points?

Mr. STEVENS. We found in one of the gorges, something like 200 feet below the bed of the river, in putting down the pipes, after going through the fine sand and fine clay, that we got into gravel, and in two or three pipes brought out a small amount of water. The pipes, as I recall it, were about $2\frac{1}{2}$ inches in diameter, and in several instances some 3 or 4, as I recall. The top of the pipes were about 10 feet above the level of the water at Gatun, and the water flowed out a little over the top of the pipes an inch.

Mr. WANGER. That would indicate that the source of the water was that much higher than the level of the river?

Mr. STEVENS. Yes, sir. Wherever that water got its head, it must have been at a point higher than the river was at Bohio, 10 miles away, and how it got that pressure, or whether by pressure of the headwaters in the hills, no mortal man can say.

Mr. WANGER. Is there any way of determining by boring, with reasonable certainty, the source of that water?

Mr. STEVENS. I do not know how you could tell. I would not undertake to say.

Mr. WANGER. I understood Mr. Stearns to say that possibly by using a 4-inch pipe—you used a 2-inch pipe?

Mr. STEVENS. Yes, sir.

Mr. WANGER. You could determine better the volume of the flow?

Mr. STEVENS. The larger the pipe or the more line you put down. But your question was how to determine where that water comes from?

Mr. WANGER. Whether it comes from the bed of Chagres or some miles above the dam site.

Mr. STEVENS. We know that it could not have come less than 10 feet above the stage of the water at the time it was flowing; that would be a mechanical impossibility.

Mr. WANGER. Suppose it did come several miles above, would it not very largely increase if the elevation at Gatun was raised 5 feet?

Mr. STEVENS. Undoubtedly.

Mr. WANGER. And might it not seriously deplete the supply of water?

Mr. STEVENS. No, sir.

Mr. ESCH. That condition would indicate an impervious rock?

Mr. STEVENS. That is what we claim.

Mr. ADAMSON. In the case of a broken or irregular strata of stone where it is fully cut above and not so below, is not the water forced up and then down the hill?

Mr. STEVENS. Water can never reach higher than its source.

Mr. ADAMSON. I understand, but if the strata be broken or cracked the water will follow the breaks or cracks?

Mr. STEVENS. If it has a head and it is quite a stream.

Mr. ADAMSON. But if it goes above the head it stops?

Mr. STEVENS. Yes, sir.

Mr. ESCH. Do those two big curves at Gatun present any mechanical difficulties that can not be overcome?

Mr. STEVENS. Not to my mind. That is the cause for the great discussion between the dam and no dam people. There are only three ways in which an earthen dam can fail. If it is too slight, the pressure behind will push it away. That is what happened to the Austin dam in Texas. If the water raises higher than the course in the case of an earthen dam, and it goes over the top and flows down the slope, it will wear away the earth. That is what happened at Johnstown; the spillway was not big enough. The spillway was too small and the water went over the top. Another way is for the water to percolate underneath, and then the only way it can get out is at the toe of the dam. Then it will have the same effect. There is no other way that an earthen dam can fail that I know of. I understand some people say that an earthquake will knock it out, but I think an earthquake will strengthen it.

Mr. WANGER. A dam might fail in its use and not remain in place?

Mr. STEVENS. Yes, sir; by not holding the water. I do not think there is the slightest occasion for apprehension at Gatun.

Mr. CUSHMAN. There could be enough water pressure if the dam was not constructed in the proper way?

Mr. STEVENS. Yes, sir; that is the first way I mentioned. The Gatun dam is only on paper. It may never be any other way. You take the plan of the dam. I can give you the dimensions and weights. Here [indicating] is a chart which shows the proposed dams and the cross sections of other dams that are in existence and have been for some years. First, you all know that only the depth of water affects the pressure. In other words, if we only had 1 foot of water, the-

oretically, behind that dam you would get the same pressure as if you had 1,000,000 miles.

Mr. ESCH. That is, laterally?

Mr. STEVENS. Yes, sir; if you had 100 feet you would have 43 pounds of pressure at the bottom. The weight of the Gatun dam as proposed is 63 times the heaviest pressure that comes against it at the bottom.

Mr. ESCH. Eighty-five feet below the water level?

Mr. STEVENS. Yes, sir.

Mr. ESCH. And the head is 85 feet?

Mr. STEVENS. Yes, sir. So everyone has conceded that the dam is larger than there is any necessity for, as far as the lateral question is concerned.

This lower sketch [indicating] represents the proposed Gatun dam. You notice that long tail all the way. This [indicating] +85 means 85 feet deep at this point. This slope [indicating] is 1 on 3. One-half of the weight is right through there [indicating on chart], 375 feet, which is four times the weight of any dam on earth.

The CHAIRMAN. In addition to the surface of the water?

Mr. STEVENS. Yes, sir. Here [indicating on chart] is the bottom, 2,625 feet, a half a mile, with a slope of 1 in 25. In other words, a heavy grade. That is made for a scientific reason. If water should percolate through the dam, which it is not believed for a moment it can, it never would get over here [indicating on chart], because it will always be kept below here [indicating on chart]. It is 7 tons to the cubic yard on its foundation, or, in other words, it is 63 times the lateral pressure here [indicating on chart], and that pressure is the same as if the lake stopped right here [indicating on map].

Mr. LOVERING. Does it not increase at this slope [indicating on chart]?

Mr. STEVENS. It decreases. For instance, here [indicating] it is pressure is the same as if the lake stopped right here [indicating on chart] it is 70 feet and 29 or 30 pounds.

Mr. KENNEDY. Pounds to the square inch?

Mr. STEVENS. Yes, sir. Here is a representation of the San Leandro dam in California. That has been built for a number of years, probably twelve or fifteen years. That is entirely of earth. There it is 115 feet as against 85 feet proposed here. There the top of the dam is 120 feet and the head of water 115 feet. There [indicating on chart] is what they call selected earth. You can see the difference in the two propositions.

Here [indicating on chart] is another dam, of red clay, constructed in California. It is entirely earth and 18 or 20 feet below the surface it has rock. Here [indicating on chart] is nothing but clay and gravel, just the same as in the other dam.

Here [indicating on chart] is a very interesting dam. Of course it is small, but it shows what has been done. This is in India. There is a dam, with a total weight of 368 feet, something like 55 feet high. There is nothing there but sand in miles, and the water leaks through and around the end of it, and yet there it stands for years and years.

Mr. CUSHMAN. Can you give us any idea of the proportion be-

tween the length of this Gatun dam and the length of some of the other dams?

Mr. STEVENS. I do not know how long they are; I could not tell you.

Mr. CUSHMAN. Would the length of the various dams affect the principles you have been speaking of?

Mr. STEVENS. Not in the slightest degree.

Mr. KENNEDY. Every section of the dam is strong enough to stand, even if the water went around the earth?

Mr. STEVENS. Yes, sir.

Mr. ESCH. You think that the earthquake might improve the dam, but you do not give the reasons?

Mr. STEVENS. I do not think that an earthquake can shake down the Gatun dam. If it made a crack in it, it would simply settle.

Mr. ESCH. But more with reference to the Gamboa dam, which is to be of masonry?

Mr. STEVENS. What the effect on the masonry will be I could not say. While I am a lock-level man, I have not taken the position that there is any structure proposed on the sea-level plan but what if it was honestly built, as it must be, will last for years.

Mr. RICHARDSON. I understood you to say that you preferred and had recommended the lock plan?

Mr. STEVENS. Yes, sir.

Mr. RICHARDSON. It has not yet been determined whether it will be a lock-and-dam or sea-level canal?

Mr. STEVENS. I understand not. That is an unsettled question.

Mr. RICHARDSON. If it should be a sea-level plan, will it affect any calculations you have made for carrying on the lock-and-dam plan?

Mr. STEVENS. Oh, no.

Mr. RICHARDSON. Will you lose any money?

Mr. STEVENS. We have lost some time by not knowing the type, but that would apply to either plan.

Mr. RICHARDSON. You are going along and working upon the lock-and-dam plan?

Mr. STEVENS. Until now, when we are ready to dig, and it would be economy to know what we are to dig. You might ask me to build you a house and I would at once say, "What sort of a house do you want?"

Mr. RICHARDSON. It would alter your plans some?

Mr. STEVENS. Yes, sir.

Mr. RYAN. Have you stated the time it would take to build a lock-and-dam canal?

Mr. STEVENS. Yes, sir.

Mr. RYAN. How long would it take?

Mr. STEVENS. Seven or eight years, I think.

Mr. RYAN. The sea-level canal would take how long?

Mr. STEVENS. I do not know. I have gone on record as saying that it would take not less than fifteen years, and it might take eighteen or twenty years. There are problems there unsolved.

Mr. RYAN. What would be the difference in cost?

Mr. STEVENS. I think \$135,000,000 and \$150,000,000.

Mr. RYAN. The sea-level canal costing the greater amount?

Mr. STEVENS. Yes, sir; that is my opinion.

Mr. ESCH. In making a lock canal, are you taking into account its possible transformation to the sea level?

Mr. STEVENS. Yes, sir.

Mr. ESCH. That would require the laying of the foundations for your locks on the lower level?

Mr. STEVENS. No, sir. It would be so far in the future that I would not do anything of that sort. I would build another lock lower down, then I would take out the Culebra cut and take out 5 feet at a time until I had eliminated it. In that way you could bring about a transformation without costing one dollar. That looks like a paradox, but it is true, as compared with the proposition as now represented.

Now, it is only fair, in discussing this proposition, that the only canal that at all compares with it—namely, Suez—should be considered. But I want to call your attention to the difference in the country through which the two canals pass. The deepest cut in the country through which the Suez Canal passes, for the entire distance of 100 miles, is 90 feet, and that is only for a short distance. There is very little difference in size between the two, but there is an absolute difference in the country; and there is not a stream that flows into the Suez Canal, from one end to the other. It is through a sandy desert. You have an absence of current. There is a little current, but not very much. There is no silt, in consequence of having no streams flowing in, and you have a very fine alignment.

As a matter of fact, the curvature of the canal proposed here at the sea level is four times as crooked as that in the Suez Canal; but the chief engineer of the Suez Canal says that it is very difficult to steer the large ships through the Suez Canal. Now, with a curvature four and a half times that amount and with a current four times, and especially not only longitudinal currents coming together through the length of the canal, but rather coming crosswise from these various points—I am not a sailor, and I only know navigation as I have observed it, and I have not had practice, but it does seem to me absolutely impracticable to put a ship through a canal of that sort, where it seems to me that the wetted section of your ship is more than one-half of the width of the canal, and where you have only a few feet of water under your keel.

I can not conceive how it can be done. I can conceive, by taking time enough with a big ship and putting a tug on each end or side of it, how it can be done, and I believe that it can be done, but under her own steam I do not believe that she would make it. As I came into New York the other day I met one of our large cruiser battle ships, and we passed within a mile of her coming in, and it did look to me, thinking of what I know about the proposed Panama Canal, as though it would be impossible to get one of those tremendous things through there, and it struck me that I would hate to be responsible for the ships which should attempt to navigate that place.

Mr. LOVERING. And yet there is a long stretch where they have to go through now, is there not, to get to the lake?

Mr. STEVENS. Yes; but that is very wide, and has a better alignment.

Mr. LOVERING. On the average would it be 500 feet?

Mr. STEVENS. Yes; we have it all here.

Mr. LOVERING. But the distance from Obispo to Miraflores would be as narrow as under the sea-level type?

Mr. STEVENS. No, sir. We have 200 feet under the lock type, and there it would be under the same plan and dimensions, and everything, as under the sea level. Under the sea level we have a great many more miles. In fact, the canal is to be 300 feet from Gamboa up to Las Cascadas, just here [indicating on map], and then it continues through to near Paraiso, which is here [indicating]. Now, on the lake level is a 200-foot stretch, and on the other it starts here and runs to Miraflores, I believe.

The CHAIRMAN. Will it require more power to propel a vessel at the same velocity through a channel 150 feet wide than a channel, say, ten times wider?

Mr. STEVENS. I should say it would; yes, sir.

The CHAIRMAN. What is the ratio of increasing power in one of these smaller channels?

Mr. STEVENS. I could not tell you that, Colonel. I could not be absolutely certain of what I said; but I say that I think so. I know that piling the water up under the bows of a large ship in a narrow channel like that must necessarily tend to keep her back, and at the same time to render the question of steerageway a very important one.

The CHAIRMAN. And there would be a very great current alongside of a vessel in a narrow channel, would there not—the water rushing back?

Mr. STEVENS. The water, of course, would be piled up in front of the vessel. Practically one-half or one-third of the water has got to get away alongside of the vessel or under her keel, and that is what makes her hard to steer, and it has got to bank up in front and break back. There is nowhere else for it to go. That is why I am opposed to the sea-level canal as it is now proposed. I believe in a sea-level canal if it is a big, fine wide one, as you can build it later on the other proposition.

Mr. LOVERING. I would like to ask you, do you not think that the money cost consideration is the really insuperable objection to the sea-level canal?

Mr. STEVENS. No, sir; I take a great deal of pride in being an American, and—

Mr. LOVERING. I will not say the insuperable objection, but is not the one that you are now considering the strongest?

Mr. STEVENS. No, sir. If the canal could be built for the same money as the lock-level canal, or, to put it the other way, to put it as a business proposition, supposing that I was going into it with my friends, I would take the lock-level canal in preference to the sea-level canal at the same money.

Mr. LOVERING. At the same money?

Mr. STEVENS. Yes.

Mr. LOVERING. And if it cost from fifty to ninety millions more, you would be so much worse off, would you not?

Mr. STEVENS. It would seem so; yes, sir.

Mr. RICHARDSON. Would you propose that the canal should be built by contract or by the Government?

Mr. STEVENS. That is a matter to be settled later. I do not believe in its being intrusted to one party. If you let it in one contract you would have such a monopoly as the world has never seen.

Mr. RICHARDSON. Would it be cheaper?

Mr. STEVENS. That remains to be seen.

Mr. RICHARDSON. It is absolutely so with all Government contracts.

Mr. STEVENS. Yes, sir; it may be.

Mr. LOVERING. I made a calculation here on the estimate that you gave, at about sixteen years, at about \$18,000,000 per annum extended, and compounding it as I go along, I make a cost of \$404,000,000 for the sea-level canal, as against the cost of building a lock-level canal of \$213,000,000, making a difference of \$191,000,000 in favor of the lock-level canal.

Mr. STEVENS. At what rate of interest do you figure it?

Mr. LOVERING. Two per cent in each case.

Mr. STEVENS. Yes. You see, I said that I was conservative in what I stated.

Mr. LOVERING. We are not trying to hold you to anything, of course.

Mr. STEVENS. Yes.

Mr. RYAN. Did you take the French estimate?

Mr. LOVERING. Allowing \$18,000,000 a year, and sixteen years for the sea-level canal, first cost, \$50,000,000; interest for one year, \$1,000,000, and amount paid for work \$18,000,000, making \$69,000,000 expended for the first year.

For the second year the interest on \$69,000,000 plus the \$18,000,000 additional gives you \$88,388,000, and so on in that way, adding the interest at 2 per cent each year, and expending \$18,000,000 a year, it comes on the sixteenth year to \$404,000,000.

Mr. RYAN. That does not include the other \$50,000,000.

Mr. STEVENS. I want to add a little more, in justification of what I have said here.

Mr. LOVERING. Let me finish this.

Mr. STEVENS. Very well.

Mr. LOVERING. That makes, I calculate, an annual charge of \$8,080,000. It makes the annual interest charge on the cost of the lock-level canal, which is \$213,000,000, \$4,260,000—the charges. Are those figures approximately right, in your estimation?

Mr. STEVENS. Yes, sir; I think so. I have made them several times, but I do not recollect them. It has been said that the chief engineer wanted something "cheap and nasty," something that he could build quickly and get the glory. I want to say that I do not care a cent about the glory. There is a lot of hard work in it; and for any man that goes down there and builds that canal there is nothing left after he gets through.

Mr. RICHARDSON. Do you not think there is a heap of glory in it?

Mr. STEVENS. Yes; there may be. But I would not go down there for that. There is some consideration that a man should show for his family and for everything that he has back here. What is it that the other fellow said, "What is the glory when Hannah is a widow?" But I want to say that it is, so far as my judgment goes, not "cheap and nasty" at all. If we could build a true sea-level canal, as people imagine, for \$404,000,000, in ten or twelve years, I would say to build it that way and drop all other plans; but you can not do it. The canal as they have proposed it will cost more, and instead of being \$107,000,000 more it will be nearer \$150,000,000 more, and it can not

be built in eight or ten or twelve years' time unless there is something in the way of excavation and handling of materials developed in the next few years that we do not know at this time; and a lock-level canal will be a better canal, and it will handle the ships more safely, and it will handle tonnage in any size of ship as fast as or faster than the sea-level canal, and it can be maintained in operation for nearly \$2,500,000 a year less. And it can be transformed at any time when the demand comes for it into a true sea-level canal, and there can be saved on the cost of construction and operation at the rate of compounding money enough to build a sea-level canal when the demand comes at no cost whatever, as compared with the present proposition.

Now, I have been criticised, and I have been criticised on the floor of the Senate, for what I said, and I suppose that I am being criticised for being up here instead of being down on the Isthmus. I do not care for that and I do not care what they say. When I am asked my opinion I have got to give it. I would be recreant in my duty if I did not do it.

MR. WANGER. You have been called here and you have made these statements because you have been asked the questions?

MR. STEVENS. Yes; if I came before you gentlemen or before the Senate committee and was asked these questions and I said that I did not know I should be discharged before night, and I ought to be. That is the way I look at it. I do not lose my individuality as an American citizen simply because I happen to be a Government officer, and I do not think that I ought to.

MR. GAINES. You were asked by me which type of canal you thought the proper one, and you did not volunteer your opinion.

MR. STEVENS. No, sir.

MR. ESCH. Have you any suggestions to make on the labor problem?

MR. STEVENS. Do you mean have I any changes to suggest from the method we are pursuing now?

MR. ESCH. Yes.

MR. STEVENS. Yes, sir; I am not satisfied with the labor on the canal and have never been. My idea is that we should not select and use one kind of labor only.

MR. ESCH. What is that?

MR. STEVENS. I think that we should not use one kind of labor. I think that we ought to mix up and get three or four different kinds. Human nature is the same the world over, and when the West India negroes and the Italians and the Japanese and the Swedes find that we are using laborers of only one nationality, we find that we can not do that. We have the matter in our own hands. I would like to have some Chinese, but I understand that it will require legislation to get them.

MR. RICHARDSON. Have you any of the negroes from the South down there as yet?

MR. STEVENS. No, sir.

MR. RICHARDSON. Could you not succeed in getting them?

MR. STEVENS. No; I do not think we could.

MR. WANGER. You would not supplant your entire present force of laborers with Chinese?

MR. STEVENS. No; not at all. I would supplant a certain number of them. We have something like 20,000 on our rolls down there. You understand that 50 per cent of the blacks are people that we have picked up. That is, we have not brought them there. They have come there. We can let them go at any time. The others we have guaranteed so many days' work, and we shall keep them and return them. We made an experiment some time ago. We got 300 or 400 Spaniards from Cuba, who had been in Cuba on the plantations or working on the railways. They have proven to be excellent men. We pay them about twice what we do the West India negroes, and they do three times the amount of work. They come from the Spanish provinces, and we call them Gallicians.

Now, I have been working two or three months laying plans to get more of them. I do not know whether it has been a success or a failure. I saw a cable from the Isthmus this morning about that. In addition to this, one of my old labor men sailed on the 2d of this month to Madrid to lay the bed plates for getting a number of the Spaniards from there. I do not know what he can do until he gets there.

MR. RICHARDSON. You have very little labor from the United States?

MR. STEVENS. We have almost none at all. You spoke of getting the colored men from the South. I do not approve of that. In the first place, the States negro does not mix well with the West Indian negro; they do not get along well together. There is a great deal of jealousy between them. In the second place, I have a pretty intimate knowledge of the South, and I do not think it would be for the advantage of the Southern States to take the negroes away from them. Perhaps you know where there are too many of them. I do not. The South needs all the negroes it has, and more.

MR. RICHARDSON. The South is getting a great many settlers now. I do not mean immigrants, but they are people coming from the Northern States. I noticed in a railroad report the other day that one railroad has deposited in the State of Alabama a number of families that came from the State of Illinois, and from the Dakotas, and so on out there—from Indiana, some of them—and they had taken up 42,000 acres of land in that State. That is just that one railroad.

MR. TOWNSEND. Have you any applications from men to work?

MR. STEVENS. Common labor?

MR. TOWNSEND. Yes.

MR. STEVENS. No, sir. You are simply robbing Peter to pay Paul, Mr. Richardson, if you take the laborers from the Southern States to work on the canal.

MR. RICHARDSON. Yes; but really the South is getting another kind of labor of late. The negro will not mix with the Italians, and we do not want them mixed down South at all.

MR. STEVENS. The Jamaican does not make a very good teamster, and the sanitary department wanted some teamsters, and they sent to New Orleans and picked up about 90 of them, and I said immediately, "You will not have one of them in sixty days." They had a few of them left, but they nearly all disappeared. They did not like it, and they went back, or went away.

MR. LOVERING. How many hours do they work?

MR. STEVENS. Eight hours.

Mr. LOVERING. Eight hours in twenty-four?

Mr. STEVENS. Yes.

Mr. RICHARDSON. I should say that our southern negroes were without any value there.

Mr. STEVENS. Yes; I think if they are of any value they are of value right where they are.

Mr. ESCH. Have you tried the Japanese on the Isthmus?

Mr. STEVENS. No, sir.

Mr. ESCH. The exclusion law would not prevent your using them?

Mr. STEVENS. I understand so.

Mr. ESCH. Have they not been found of use in the Tropics elsewhere?

Mr. STEVENS. I do not know anything about the Japanese in the Tropics. The Chinese have been used in the Tropics, and of course you take a great extent of the country back from the coast in China, and there are millions of them living and working there in a climate which is almost identical with that of the Isthmus of Panama. There is a prejudice about them, of course. But I know that when they were building the Panama Railroad they used them with great advantage. At the time they were building the Panama Railroad, of course, they had what is called the "Chagres fever," and they died in great numbers from it. Now, I have seen the Chagres fever, and I know what it is. At that time on the Isthmus they had no provisions to take care of them, and the Chinese commenced dying very rapidly, and they commenced committing suicide. The name of the place, Matachin, I understand, means "Dead Chinaman." There were 400 of them committed suicide there.

Mr. RYAN. They would lie down and let the trains run over them?

Mr. STEVENS. Yes; and they committed hara-kiri, great numbers of them. I have no doubt that under the sanitary conditions which now prevail there they would be all right. I have had at one time 4,800 working under me, in the Selkirk and coast-range mountains. When we were building the railroad we had large numbers of them. Of course they would not do as much work as the average northern white man, the Swede, or the Irishman, but to me they were of more value at a dollar a day than the white man was at \$2. And you never saw a more cleanly people. These poor fellows would work all day at their hard labor and then come back at night and hang up their little basins of fish and rice to cook, and then every one of them would take his clean clothes and go down to the little mountain stream, bathe, and change every rag of clothes that he had on before he would eat his supper.

Mr. ESCH. Do you care to make any observations as to how the work should be done, whether by the Government or by contract?

Mr. STEVENS. I would divide it into subdivisions, and I would never think of letting it to one party. I do not think that is possible. There are some very grave features connected with contracting at all, but I think that it can be done. It would depend altogether on the bids that I would get. I could tell better afterwards, when I knew what the work would cost. Grave questions would be involved in this. It is absolutely necessary not only for the United States to retain control of the policing and the government, but also sanitation; and sanitation means something more than the rules that the board of health promulgates in a city. It means the

personal inspection two or three times a day of every laborer's house on that Isthmus.

Perhaps you think the estimate of the sanitary department is high; but it is necessary. I do not suppose that four hours ever goes by but what some man connected with the sanitary department goes through every laborer's quarters on the Isthmus. We do not allow a thing to collect around those houses or in them. We do not allow a pile of dirty clothing to collect under a bunk or anything. And by means of that expenditure of money and that close inspection Doctor Gorgas has been able to get the record that we have, which is something remarkable. To-day our sick list is not any more than it is in the northern cities. Last August and September, eliminating the yellow fever and taking simply the other fevers and pneumonia and bowel troubles and everything of that sort, even down to child-birth, if you will, and broken limbs, in my department I have got only 40 per cent in the hospital to-day of what I had a year ago. That shows the difference.

Mr. RICHARDSON. That is a very great change.

Mr. STEVENS. It is a great change. And to-day and for the last few months the greatest cause of mortality there you would never guess unless you looked it up. It is pneumonia.

Mr. RICHARDSON. In that climate? Pneumonia?

Mr. STEVENS. Yes, sir; pneumonia.

Mr. RICHARDSON. I am surprised to hear that.

Mr. GAINES. Do you have cold nights?

Mr. STEVENS. We would not call them cold. They are a great deal colder than here during the heated term.

Mr. RICHARDSON. It must be a very humid atmosphere.

Mr. STEVENS. Yes; it is. But the great difficulty to be overcome there in the way of sanitation is not yellow fever. Yellow fever is a by-product. The effect of the yellow fever is on the mind. It scares people. The great difficulty is malaria.

Mr. WANGER. Have you any hope of banishing malaria?

Mr. STEVENS. No, sir; I do not think so, but it can be very largely decreased.

Mr. ESCH. Then one objection that you would have to letting the work out by contract would be that you could not control the sanitation?

Mr. STEVENS. You would not have to, no matter whether you let a small or a large contract. You could not trust the contractors to do it. They would not spend the money. Then the Panama Railroad is a creature of the Government of the United States, and while you are taking care of the commercial business and must always take care of the commercial business, the utility of that railroad is largely for the building of the Panama Canal. In other words, it is an incident to and must be used for the building of the Panama Canal, and whether or not the contractor or a set of contractors can take hold of that and handle the railroad and run the business or not is a question, or whether the Government would have to handle the contracts at so much a train or so much a load, or to let the contract material run over the road at so much a mile is a question, and all that must be considered.

Then we must have very large machine shops that can take care of all the necessary repairs. We have 100 or 120 engines, and the

contractor would not duplicate that plant, and how would those repairs be handled? Those are problems to be considered; but, on the other hand, it must be recollected that the dollar of the Government should go as far as the dollar of the contractor, and somebody must supervise this, and the Government goes into the market and hires an engineer, and it is simply a question of whether we get down to a business basis and eliminate all other outside influences and recognize that that must be done as a business proposition, or whether we have got to travel along and have every Tom, Dick, and Harry say, "Here, you are doing this wrong." Although I have not been interfered with very much, there have been times when I would have been glad to come back here.

Mr. WANGER. The charge has been made that the work was being hampered by political favoritism. Have you seen any evidences of any such thing?

Mr. STEVENS. No, sir; I have not. I have 12,000 men on my pay roll, blacks and whites, and if there is one of these 12,000 that holds his position by birth or influence or who got it that way I do not know it. I would not discharge him if he had, if he filled his place, but I would not keep him an hour if he did not. I have not hired anybody because there was pressure on me; and there has been no case of pressure, and there have been very few cases where I have been even asked to appoint a man.

Mr. ESCH. Could not the work be prosecuted much cheaper if you did not pay any attention to the eight-hour law?

Mr. STEVENS. Yes, sir; I think so. Of course by a rider to the appropriation bill we have now a right to work aliens more than eight hours, but we can not do it for this reason: Ninety-five per cent of our superintendents, of our engineers, of our general foremen, are whites, and American citizens, and it is doubly impossible to work a gang of negroes ten hours and then let your superintendent go at the end of eight hours. The negroes do not do very much work when the bosses are over them, and they would not do any at all if they were not.

Mr. WANGER. Where do your mechanics come from?

Mr. STEVENS. Our mechanics come from the United States almost altogether, and we are getting a good grade of mechanics. The change in the last few months has been very remarkable.

Mr. WANGER. There has been a great deal of money expended in cutting off the growth of vegetation?

Mr. STEVENS. Yes.

Mr. WANGER. Is there any way, by grazing, to avoid it?

Mr. STEVENS. Yes; I think so. I think around the settlements like Empire and Gatun that sheep and goats would help out very much in keeping down the growth of grass. It has been suggested often, but the sanitary people have not got around to trying it.

Mr. WANGER. There has not been any experiment made so far?

Mr. STEVENS. No, sir. Something was said here this morning about the prevalence of mosquitoes. There are in certain places many mosquitoes, but the Isthmus of Panama is not what I should call a very prolific mosquito country as compared with many parts of the United States, judging from my many years of experience here.

Very seldom there is a day goes by that I am not out on the work, particularly since I have been located at Culebra. I go all over the work almost every day. In other words, I am out at all times in the day from 6.30 in the morning up to night; but I do not go out at night, and my house is screened, as every one of the houses of whites is on the Isthmus, and as everyone of the houses of the blacks will be. I live in a wooden house, and I have the same amount of protection, no more and no less. I have never seen one-tenth part of the number of mosquitoes on the Isthmus that I have seen elsewhere. But the strangest part of it is that I have never been bitten by a mosquito.

Mr. WANGER. Have you been down to the old church; I do not mean the large one, but the old church?

Mr. STEVENS. I have never been there.

Mr. WANGER. There was a perfect swarm of mosquitoes there.

Mr. STEVENS. Since I have been at Culebra I have seen two mosquitoes; that is all. I live up on the hill where the men are quartered.

Mr. ADAMSON. How far is the place where Balboa first sighted the Pacific Ocean, from Colon?

Mr. STEVENS. I do not know. Some put it at Darien, and others at Colon. If he landed at Porto Bello he must have gotten his first view from the high mountains, about 6 miles east of Panama.

Mr. ESCH. How many men do you expect to employ at one time on the canal?

Mr. STEVENS. It depends altogether on the kind of men. If you figure on those that I have got now, the West Indian blacks. I think on our pay rolls we would have from 30,000 to 35,000. That means an effective force of about 20,000.

Mr. ESCH. You have 20,000 now.

Mr. STEVENS. We have 23,000 names on the rolls now, and that means that on the work there are about 15,000. These men do not work constantly. They work for two or three days in the week and get enough to buy what little food and necessities they want, and then they lay off. They have no ambition, in which they are probably nearer right than we are—at least they are happier. But there is hardly a ship that goes down now that is not crowded and does not carry a great many women and children, and that means that our mechanics and train men and the better class of men are going there to stay. And that means that we are getting something besides a floating element.

Mr. TOWNSEND. I was interested this morning in your statement about the change of the location, as proposed by the majority and minority reports. Now, your plan, as I understand you, was to follow the line of the old French canal?

Mr. STEVENS. You are speaking now of the southern end?

Mr. TOWNSEND. Yes.

Mr. STEVENS. Yes; that was my own idea.

Mr. TOWNSEND. And did I understand you—you did not say that, but did I understand you to say or to mean—that the work which the French company did there would fully offset the extra length of the canal in going that way around?

Mr. STEVENS. Yes; in my opinion. And there were other advantages where I differed from the minority board and from the Commission. I think that you will find that I am on record in regard to that in the report of the Commission, in which I said, however, as

between the lock canal and the sea-level canal, that I was willing to waive my objections on the ground of the extra expense. Here is my idea: Here are the four inside islands right here [indicating], and the United States Government owns all but a part of one of them. In a direct line from those islands a ship can lay up behind them, and there is no possible way—and I have experimented by going out and laying around in a launch—there is no place in which you can fortify so that a ship can be dislodged from that place unless by dropping shells on her from above from land batteries from a distance of 3 or 4 miles.

Now, if the canal is to be made neutral, I do not believe there is any way of protecting the canal if you leave that situation in that way, a ship being supposed to lie right here [indicating]; and I said that the importance of that was great enough to justify the expenditure of four or five million dollars, and to put these locks at Pedro Miguel, and then you would be 4 or 5 miles from where a ship could lie; and the only way that she could throw a shell on the locks there would be that you might, with a range finder, after many experiments, get a shot over at those locks. But here they are in plain view. The Secretary agreed with me that it would be better to put one lock at Pedro Miguel and two here [indicating on map]. I would put the locks through over the old French alignment up to Pedro Miguel.

Now, it is said, "You are arguing against your own mosquito theory." But in the interior there is no material difference between the old sea level and the other, so far as that is concerned. Throwing the difference of the additional depth out of the question, look at the map. I do not think that anybody is going to claim that there is any chance of any large population ever being in here [indicating on map]. Four hundred years have gone by, and there is not a white settler in there as yet, except at Gatun and Mindi. But throwing that aside, just cast your eye over that [indicating]. Here is an artificial fresh-water lake, and here is another one, and here is another one [indicating], and I do not believe that there is 10 per cent of difference in the area to throw out this little lake here [indicating]. If the lock type of canal will breed mosquitos, so will the other.

The great concentration of population, both black and particularly white, will always be at Panama. It always has been. It is the natural place for a city. Suppose we go to work and create a fresh-water lake right there [indicating]. Now, if there is any chance to breed mosquitos it is right there.

Mr. WANGER. On the other hand, will there not be a great deal of apprehension on the part of the inhabitants of Panama that they may be inundated by a breaking of the dam?

Mr. STEVENS. Yes; but that would be totally unwarranted.

Mr. WANGER. But do you not think that there would be a great deal of apprehension while the works are in process of erection?

Mr. STEVENS. Yes; I suppose so. On this lake from this 4 miles or so of the free navigation you do not get the advantage that you do in the long unobstructed navigation here. But as I said, I would be willing to waive that, although I think the other plan is better. By following the old French line up here we preserve the railroad terminals also in their entirety, and can add to them as we like; and there must, and always will be, terminals after the canal is built, although, of course, small ones.

Mr. WANGER. And if the lake was constructed, you would have to build new terminals?

Mr. STEVENS. Yes.

Mr. ESCH. How much need would there be for the railroad after the canal was in operation?

Mr. STEVENS. I can not see very much.

Mr. ESCH. Would there be enough to change its location almost half way across the Isthmus for you to have this bigger lake?

Mr. STEVENS. Yes, because there would be to here that you would be covering the railroad, and you must have the use of the railroad for a year or a year and a half while constructing the canal. I would build a cheap railroad. I do not see any great amount of use for the Panama railroad after it is built. There will be some timber products going out of the country and there may be some mines in there, although they have not had any as yet. I have had in mind an electric line. But nobody is going to unload stuff that is going across from one place to the other and bring it over here and then load it up again. Of course, that is ridiculous.

Mr. WANGER. The lock type of canal would require a very large embankment, would it not?

Mr. STEVENS. Yes; crossing these places in here [indicating on map], and one or two places in here [indicating].

Mr. TOWNSEND. How long do you estimate it would take for a boat to make the trip across there, if you had the locks?

Mr. STEVENS. It should be made in ten hours. I take the opinion of Mr. Ripley and Mr. Noble, who are the best authorities in the world on locks. There is no question about it.

Mr. WANGER. You accept the plan that they submitted to the Board of Engineers?

Mr. STEVENS. Yes. I have already retained Mr. Ripley's services for the general design and construction of those locks, because I think that he knows more about it than I do or anybody else.

Mr. WANGER. The Panama water supply is obtained from Lake Culebra, is it not?

Mr. STEVENS. From Rio Grande Lake, right there, that little blue spot [indicating on map].

Mr. WANGER. Culebra station?

Mr. STEVENS. Yes; a mile and a half south.

Mr. WANGER. And either type of canal crosses the main, does it not?

Mr. STEVENS. Yes; at Pedro Miguel.

Mr. WANGER. That would be destroyed, would it?

Mr. STEVENS. No, sir; we would have to substitute; we would have to put a syphon under the canal to take the water across.

Mr. TOWNSEND. The water main has been completed and is in operation?

Mr. STEVENS. Yes; water was turned in there on the 4th of January last.

Mr. TOWNSEND. I remember that they were working on that when we were there.

Mr. STEVENS. Yes; and we have a very nice supply, and to show you the quantity, the entire reservoir was only drawn down a little more than 4 feet during the dry season, and I had an estimate at

the end of the dry season, and there was enough, at the same rate of increase, for an entire year more.

Mr. TOWNSEND. Does not that water, held in such an amount by the reservoirs, get stagnant?

Mr. STEVENS. In the dry season, as in all reservoirs in the world, a growth of algæ will occur; but there is no bad taste to it.

The CHAIRMAN. What was your observation as to the value that they have given in Panama to an abundance of good water, as to the quantity that they use?

Mr. STEVENS. It took them some time to appreciate it. Of course the house connections are not all made. We had taps put on, little faucets put on the hydrants, so that they would go there and draw water at the street corners. Previous to this time there were a large number of the old wells, which had been there a couple of hundred years and must have been very foul, and the water carts would haul the water around town and sell it. We gave them water from the taps, and I have seen a native woman take her bucket and her money in her hand and go right past one of these hydrants and go and buy water from a water cart that came from these old wells.

Mr. TOWNSEND. Is not it colder?

Mr. STEVENS. No, sir; I do not know that it is. It takes about that long to get an idea through them. But they have now filled up a large part of all these old wells, and now they are universally getting the water out of the pipes and the hydrants, and they use it in very much larger quantities than before. In fact, they are running sprinkling carts in Panama. No restriction is put on the use of water in Panama. In fact, we encourage their use of it.

Mr. WANGER. The charge is published that in excavating a sewer ditch it was necessary to go 20 or more feet—I do not remember exactly how far—and the sewer could have been dug to a width of 2 feet if there had been boards supplied for shoring the banks, and there was an abundant supply of boards, but that red tape prevented their being furnished; and that an engineer suggested finally that the ditch should be dug so wide that the banks would not cave in, and consequently there were 87,000 yards of needless excavation at an expense of \$1 per yard to the United States on account of these red-tape methods. Do you know anything about that?

Mr. STEVENS. No, sir; but I would say this: In the first place, the character of the material in Panama is such that this story does not apply. The material is indurated all through. In the second place, there is not a ditch or an excavation in the sewer system there that I have not personally inspected as it was being constructed, and I have never seen a ditch slip. Finally, there was no red tape about a man going and getting lumber, and there was no difficulty in his doing so in half an hour if he wanted it. The office is never more than half a mile from the scene of the work, and all that a man had to do was to go to the office and make his requisition and have it approved and go and get a team to haul it; and that was all there was to it. Talk about red tape in getting supplies; there is nothing to it. And as far as the expenditure of \$87,000 in the digging of that ditch is concerned, that is absolutely false. I do not think that a ditch, to my knowledge—and I say that I have seen them all—has ever been dug there over 4 feet wide. I do not recall any such case.

Those statements are on a par with those made along the same line, and there is about as much truth in one as in any other. I have seen a statement in a California paper to the effect that the chief engineer was well because he was in a brass cage at a thousand feet elevation. As a matter of fact, I live at an elevation of 400 feet above the level of the sea, in an ordinary wooden house, with screens on it, and I go out every single day from morning until night. Those statements are all made for a purpose.

Mr. WANGER. You are at Culebra?

Mr. STEVENS. Yes.

Mr. WANGER. What force have you there?

Mr. STEVENS. In Panama we have an office, and all the rest of the force is taken off.

Mr. WANGER. Where is that quartered?

Mr. STEVENS. At Culebra.

Mr. WANGER. Who lives in the house that was the chief engineer's house there?

Mr. STEVENS. The American legation has that house; the American minister has it. The lower floor is not used by him.

Mr. WANGER. The French had their offices up on the second floor?

Mr. STEVENS. Yes; that is practically closed. The second floor is occupied by the American legation, and on the third floor there are four or five sleeping rooms that are used by transients, people that come in there that have to be taken care of. We have those floaters that we have to take care of from time to time.

Mr. WANGER. Did I understand you to say that the American minister lived there?

Mr. STEVENS. They have their offices there. Governor Magoon lives in the house that he used to live in. I would not live in the old engineers' house a minute. You can not get me to live in Panama.

Mr. WANGER. There was a plan for the dam at Alhajuela, and then there was another project?

Mr. STEVENS. Yes; then there were several other projects to drive tunnels through to the north of the Chagres River to the Caribbean Sea. One comprises a cut 12 miles long, which never could have been built. Then there were two short tunnels there, I think. That proved not to be at all practical, and then they dropped back on building the Gamboa dam.

Mr. ESCH. Can you imagine anything ever shutting off the water supply for operating that canal?

Mr. STEVENS. Only if the Lord should suspend rains. If we should have two years or even one year of suspended rain then you would not have water enough. But we had this last year as near a drought as ever before has happened, according to the records. We have the records for the last twenty-five years, and there was less rain this last year than ever before in that time.

Mr. ESCH. The average rainfall is about 25 inches?

Mr. STEVENS. Up around Bohio I think the record is 146 or 150 inches. It is a trifle less at Colon. There is no probability of not having water for the operation of the canal unless the changes in the seasons are such as have never been known. The rainy season comes in the first of May and the rains continue until the first part of December.

Mr. ESCH. Is it not possible by the use of spillways at Gamboa dam to entirely divert the flow of surplus waters into the canal at the sea level?

Mr. STEVENS. Yes; they figure that they can take out 15,000 cubic feet per second and let it into the canal there. They can probably take care of that in that way, but, at the same time, it is admitted that the addition of this would produce a decided effect in the Chagres after you leave the mouth of the Trinidad. That brings up a point that I would like to call your attention to. In the first place, during the construction it is proposed to build a parallel canal from the Gamboa dam along the line of the foothills down here [indicating on map]. I do not know how far it is to go, but I imagine clear through to Bohio. That is to take the waters of the Chagres while the canal is under construction. After construction that is to be abandoned and the water is to go directly into the canal.

Now, these lakes here [indicating] are artificial basins. You can see them here [indicating on map]. The current of these rivers is to be reversed. In other words, to speak in a countrified way, they would run uphill. They are to build a dam here and another one there, and there is another one here, and another one here somewhere [indicating]. I think there are four of them. They are going to bank that water high enough so that it will run down here into the Trinidad [indicating on map]. Now, in three different cases that involves the construction of dams, and I understand from the description that they are earth dams of exactly the same construction as at Gatun. Nothing whatever is known as to the location of these dams. There never have been any engineers there, and there never has been any survey except for the very fanciful map made by the French engineers. They have guessed at the course of the rivers and the elevations. They have taken narrow places in the map and said: "We will put a dam there."

Nothing has been known about the foundation for those dams. It may be all mud. Those dams hold back 75 feet of water. I have been calling those dams to your attention. If those dams went out, of course the entire lakes would be precipitated into the canal. I do not know if they can not be built and can not be made to stay. Nobody knows anything about it. There has never been an engineer of the Commission or any member of the Consulting Board within 2 miles of it for purposes of examination.

Mr. TOWNSEND. Now, which plan will affect the disposition of your earth most generally?

Mr. STEVENS. If we build the Gatun dam, we will put a number of millions of yards of earth in there [indicating on map]. To build the dam at Ancon, if we build a sea-level canal, we have got to get places where the country is flat enough so that the material will not be washed back into the canal. With the lake way I would come down here [indicating on map] and select a point away from the channel half a mile or a mile, where I would deposit material that would be covered by the deep indentations of the lake afterwards.

Mr. TOWNSEND. I did not know but the forming of an artificial lake might occupy some of the land that you might otherwise use as a dumping ground.

Mr. STEVENS. You understand that the topography governs the place. In other words you would not put this stuff on sloping

ground, because it would find its way back into the canal. But you can put it back in the indentations of the lakes, where it is perfectly flat, with safety. You want to remember that the river Chagres is perfectly level from Colon to Bohio. In other words, the tide rises and falls within two or three inches as much at Bohio as at Colon. From Bohio the country commences to rise until when you get to Gamboa it is 50 feet; the bed of the river is 50 feet above sea level. At Gamboa, from mile 17 to mile 31, in that distance the river rises 14 feet. The sea-level canal means exactly what it says, that it has got to be dug level, and when it comes to Gamboa the surface of the sea-level canal will be 50 feet below the bed of the Chagres at this point, and correspondingly less at Bohio, where it corresponds, naturally. That means that these smaller streams coming in would fall into the sea-level canal from a height of from 10 to 163 feet. In other words, there would be cascades that must be taken care of. Of course large bodies of water, some of them amounting to 1,000 feet per second, can not be allowed to come into the canal with any such head as that. They would fill the canal up in twenty-four hours. The project is to bring them in in pipes into the canal. I do not think that would be practicable, because the amount of trash that would be carried down by these streams would fill up an iron pipe in two minutes. The other project is to form a large number of long steps, like the steps of the Capitol here, so that the water can dash down and be broken as it runs down the steps. That could be done easily; but where the water debouches into the canal is the place where it will deposit all that silt, and my opinion is that you would have to have a lot of dredges working all the time cleaning out the canal. It has been said that you could dig basins for this purpose, but of course, those basins would be simply big bowls and they would have to be dredged out. I think they are a disadvantage, because you can let the stuff come right into the canal and dredge it out there cheaper than you can take it out of the basins.

MR. WANGER. Are they not going to have it just the same with the lock canal after they get it built?

MR. STEVENS. No; there is no stream coming in until you get to the Culebra cut. This big stream runs up 36 miles before you get to the 80-foot level [indicating on map]. This is something like 14 miles up [indicating]. All your silt in these big rivers would deposit 14 miles back from the canal, and these streams grow smaller, and you can see the distance they are apart. Here is 3 miles, there is 2 miles [indicating] that these streams come in.

MR. WANGER. Under the lock canal the streams coming in strike the large body of dead water, and the force of the current is broken?

MR. STEVENS. That is the theory.

MR. WANGER. And under the sea-level canal you would either have cross currents or you would have to make the channel parallel with the line of the canal?

MR. STEVENS. I think it would result in building three canals, one to take the traffic and one on each side to take the water. I think you would absolutely have to keep the majority of that water out of the canal or you would find that you would have a head current that you could not navigate with large ships. The other reason is that you would have to keep it out of there on account of the large amount of silt that it would bring in. You would have only 3 or 4 feet of water

under your keel there, and it is very easy to fill that up. The third reason is the cross currents.

Mr. ESCH. Does not the sea-level canal project at present contemplate diversion?

Mr. STEVENS. Yes; I have just explained the diversion back from the ridges here [indicating]. They contemplate taking the Mindi and the Gatun out. But what I say is that you must either do one thing or the other, either let those smaller streams come in or dig canals at each side of the traffic canal and keep it out until you take it down here and get rid of it through the Gatun or the Mindi. That is my opinion. It may not be worth much, but I believe I am right.

Mr. WANGER. Under the lock plan you would have to make some provision for the mouth of the Obispo.

Mr. STEVENS. Exactly, and of the—

Mr. WANGER. As I understand, you propose to build a dike?

Mr. STEVENS. Suppose that is the railroad, and it runs right around that point [indicating on map]. The only dike that could be built in the lock plan is here [indicating]. There has got to be a little dike there.

Mr. WANGER. That is at Paraiso?

Mr. STEVENS. Yes; the railroad comes down here and crosses there and comes down here [indicating]. I have got to put a dike in there 25 or 30 feet high. That is the only dike that is to be put in there. The Trinidad comes down from the west and cuts off the entire drainage here [indicating]. This water must be kept out of the sea-level canal. It is a tremendous large river, and it is expected to do that by diking from the Agua Clara Marsh—from this vicinity down here [indicating on map].

Mr. WANGER. Is that river subject to overflows?

Mr. STEVENS. Yes.

Mr. ESCH. Not so much as the Chagres?

Mr. STEVENS. No; and for this reason, because you go up here 36 miles before you get 88 feet of elevation. Then it rises very rapidly. Of course, in the upper reaches of the Trinidad the river rises very rapidly. You get very violent raises there, but it is checked up long before it gets to the Chagres. You get a great body of water, but it comes slowly, whereas the Chagres comes right down through; and that is the reason it is so destructive at Gamboa.

Mr. ESCH. One of the arguments made against the lock-level type was the large number of acres submerged and the cost of purchasing that land.

Mr. STEVENS. Yes.

Mr. ESCH. Now, if we take the sea-level canal with the four dams you mentioned, would that combined area almost equal the area of the lock-level type?

Mr. STEVENS. No, sir; I do not think more than two-thirds of the area would be covered by those two lakes here [indicating on map]. The argument has been made in many places that the cost would be millions of dollars for this land. That argument is based on the fact that the Commission condemned some land in Panama for which they paid \$41,000; ergo, the cost of the land in the interior that they require would be the same per unit. The land required lies between Ancon Hill and the city of Panama. Panama is on an

island, surrounded on three sides by water, and on the other side by the manglares. That is a marsh covered at high tide. Those lands always belonged to Panama, and their right was transferred to us.

Now, the city of Panama is solidly built and there is hardly room for another house in the town proper, and there is no possibly way for Panama to expand, excepting into the sea or a very small way into this manglare or onto the Santa Rosa tract. In other words, this tract which the Government acquired and paid \$41,000 for covers two-thirds of all the available area that there is left for Panama to expand in, and Panama is built solidly up to it, which means that it is highest-priced business or residence property. Now, it is just as fair to assume that land on Pennsylvania avenue as a unit of price should be compared with the poorest kind of land you could find over in Maryland or Virginia; in other words, if I go out on Pennsylvania avenue and pay \$80,000 for one-third of an acre, that I should pay \$80,000 or \$90,000 for the same amount of unimproved farm land out in Maryland or in Virginia. This land is a jungle all up through here, which would be acquired for the purpose of the canal. It is of no use. There is not a road on the Isthmus of Panama except the streets in Panama and 5 or 6 miles that the Commission has built between La Boca and Panama and out to the Zone line.

Mr. ESCH. Across the savanna?

Mr. STEVENS. Yes. The present charter of the Panama Railroad, which was gotten fifty or sixty years ago, contained a clause prohibiting anybody from building a road in any direction on the Isthmus, and the old owners of the Panama Railroad strictly enforced that. Their idea was to prevent railroads being built that might take some of the business from the railroad.

Mr. ESCH. They used to charge people for walking on the track, did they not?

Mr. STEVENS. Yes; they used to charge people for walking on the track; that is right. And if you except the streets of the town there is not to exceed 8 or 9 miles of wagon road on the Isthmus of Panama. The only thing that approached a wagon road was the old hack trail to Old Panama, which was disused for many, many years. That was the way that they brought their pelf to Panama and packed it across to Nombre de Dios, an old Spanish town, and from there shipped it to Spain. The road was about 6 feet wide, and paved, I understand, the entire length with cobblestones. It is in use in parts now. I have seen it in places. That was the road where, under Queen Elizabeth, the English used to come out and waylay the Spaniards as they were coming across.

Mr. ESCH. Could you develop power from the Gamboa dam for the purpose of excavation or motive power?

Mr. STEVENS. I hardly think so. In the first place, it would be several years before you could do that. No; I do not think it would pay. I think this, though; later on you can develop from Alhajuela by a low dam, or at some other favorable point you could develop plenty of power to operate your final railroad, which, as I said before, I think, would be made an electric line.

Mr. ESCH. Is it contemplated to light the canal electrically?

Mr. STEVENS. I would like to have some parts of it lighted which I can work at night. Do you mean before or after completion?

Mr. ESCH. Before and after.

Mr. STEVENS. Of course, after it is completed it has got to be lighted some way.

Mr. ESCH. How about going through the Culebra cut?

Mr. STEVENS. You would have to light the sides of that, of course.

Mr. ESCH. And the approaches to the locks?

Mr. STEVENS. Yes.

Mr. ESCH. All approaches to locks?

Mr. STEVENS. Yes. That would be taken care of, and it is estimated that in the Gatun locks ample horsepower for operating the machinery and the lights would be necessary.

Mr. WANGER. In the Gatun lakes you would get, without any great amount of excavation, a good wide canal channel that would eliminate more than a mile of length?

Mr. STEVENS. By coming so near what is known as Lion Hill cut-off, with that depth of water. It will probably take me until August to finish all the detailed surveys in that part of the country. It is expected that with very little expense we can get a wide channel—not less than 600 or 800 feet wide, probably—that will cut off a little over a mile. But on the map we have not taken that into account. We have simply taken the known longer line.

Mr. WANGER. The same thing might be possible in the neighborhood of San Pablo?

Mr. STEVENS. Yes; there is a slight diversion there that is possible to be made, but I do not believe in that.

Mr. WANGER. You think there would be too much excavation?

Mr. STEVENS. Yes; I think so.

Mr. TOWNSEND. Do you operate your men down there under the civil-service rules?

Mr. STEVENS. Yes; that is, the inside force; the clerks are all under the civil-service act. The others—the outside men—are not.

Mr. TOWNSEND. Are they subject to a physical examination—the inside men?

Mr. STEVENS. A physical examination?

Mr. ESCH. Yes.

Mr. STEVENS. The same examination as all the civil-service people are subjected to.

Mr. ESCH. I did not know whether you had any special examination for that particular locality.

Mr. STEVENS. No.

Mr. RYAN. But they are examined specially for the Panama Canal service?

Mr. STEVENS. Yes.

Mr. RYAN. That is a separate examination from that for the Departments in Washington?

Mr. STEVENS. Yes. If we want a clerk we call on the Civil Service Commission for that clerk, just as we would for a clerk in the Treasury Department.

Mr. RYAN. I did not think they were on the same list.

Mr. TOWNSEND. Do you have a right to promote a man if you see fit?

Mr. STEVENS. Without the civil service?

Mr. TOWNSEND. Do you have a right to promote a man?

Mr. STEVENS. There are three classes of clerks—first, second, and third: We can promote from one to another, but we have no right to take from one class and put into another. We have to make application to the Civil Service, and they have to take an examination. Mr. Cooley now is arranging for a board on the Isthmus as an appendix to his office. Of course outside men I can handle as I please.

Mr. WANGER. Are you hampered at all by the rules?

Mr. STEVENS. Not at all. I was hampered when the entire force was under the civil service. They were not able to furnish artisans and mechanics and people of that sort, and last winter when I was up here we went over the whole matter, and it was decided in that way—that we would take care of the outside men, so as to leave the inside portion of the force under the civil service.

Mr. WANGER. What portion of the time does the committee live on the Isthmus?

Mr. STEVENS. I could not tell you about the proportion.

Mr. WANGER. Governor Magoon is living there, is he not?

Mr. STEVENS. He lives there all the time, and the balance of the Commission have paid one or two visits. Mr. Shonts has paid three visits.

The CHAIRMAN. If there are no further inquiries, we will consider the committee adjourned. Is there anything that you desire to say further?

Mr. STEVENS. Nothing, Colonel; excepting if the gentlemen want to ask some more questions I will be very glad to answer them.

Mr. TOWNSEND. You have great faith that this canal can be constructed in the lifetime of some of the people who are now in existence?

Mr. STEVENS. If I did not have, I would never go back there. Oh, yes; I know it can. There is only one absolute essential, and that is that we retain our grip on the sanitary situation. The other questions, while they are difficult, can be handled all right. And as far as the yellow fever is concerned, we may occasionally have a sporadic case, but I think that the yellow fever will come in from the outside if we get it. In other words, it is a matter of quarantine.

Mr. WANGER. When is the election to occur in Panama?

Mr. STEVENS. The 1st of July, I believe.

Mr. WANGER. Does Governor Melendez come up for reelection, or is his office involved in this election?

Mr. STEVENS. I do not think his office is involved. Even the President is not, you know. President Amador holds over.

Mr. WANGER. It is the members of the Parliament?

Mr. STEVENS. Yes; the members of the Parliament.

Mr. WANGER. Well, the committee is very much obliged to you, Mr. Stevens.

[Adjourned.]





HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY

OF THE

HOUSE OF REPRESENTATIVES,

59TH CONGRESS, 1ST SESSION,

IN RELATION TO

H. R. 3159, H. R. 13655, H. R. 13856, H. R. 16479.

MEMBERS OF COMMITTEE:

JOHN J. JENKINS, WISCONSIN, *Chairman*.
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ROBERT L. HENRY, TEXAS.
JOHN S. LITTLE, ARKANSAS.
WILLIAM G. BRANTLEY, GEORGIA.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.

1906.

[H. R. 3159, Fifty-ninth Congress, first session.]

A BILL to limit the effect of the regulation of commerce between the several States and with foreign countries in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory for delivery therein, or remaining therein for use, consumption, sale, or storage therein, shall, upon arrival within the boundary of such State or Territory, before and after delivery, be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

SEC. 2. That all corporations and persons engaged in interstate commerce shall, as to any shipment or transportation of fermented, distilled, or other intoxicating liquors or liquids, be subject to all laws and police regulations with reference to such liquors or liquids, or the shipment or the transportation thereof, of the State in which the place of destination is situated, and shall not be exempt therefrom by reason of such liquors or liquids being introduced therein in original packages or otherwise; but nothing in this act shall be construed to authorize a State to control or in any wise interfere with the transportation of liquors intended for shipment entirely through such a State and not intended for delivery therein.

[H. R. 13655, Fifty-ninth Congress, first session.]

A BILL to limit the effect of the regulation of commerce between the several States and Territories in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the interstate-commerce character of all shipments of intoxicating liquors, including ale, wine, and beer, from one State or Territory into another State or Territory shall terminate immediately upon their arrival within the boundary of the State or Territory in which the place of destination is situated and before the delivery of said liquors to the consignee, and said liquors and all corporations and persons engaged in such shipment shall then become subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers to the same extent and in the same manner as though such liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise: *Provided,* That shipments of such liquors entirely through a State or

Territory and not intended for delivery therein shall not be subject to the provisions of this act, nor shall this act authorize the infringement of the right of common carriers to continuously transport such merchandise from without such State to a station therein.

SEC. 2. That in all such shipments to be paid for on delivery commonly called C. O. D. shipments the sale shall be held to be made at the place of destination, or where the money is paid or the goods delivered.

[H. R. 13856, Fifty-ninth Congress, first session.]

A BILL to prohibit express companies and other common carriers from importing from foreign countries into certain localities of the United States and from transporting from one State into certain localities of another State intoxicating liquors when carried to be delivered with the charge to collect on delivery.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That express companies and other common carriers are prohibited from importing into the United States from any foreign country and from transporting into one State from another State any spirituous, malt, or vinous liquors forbidden by the laws or police regulations of a State to be sold therein, or prohibited by law to be sold in the county or municipality whither they are transported, when such spirituous, vinous, or malt liquors so imported into the United States or so transported into such State, county, or city are carried collect on delivery, or in any manner so that the carrier thereof is charged with the duty of collecting money in payment for the same or of doing any other act as agent for the seller necessary to complete or perfect the sale.

SEC. 2. That any express company or other common carrier which shall violate the provisions of this act shall be guilty of a misdemeanor, and, upon conviction, shall be subject to a fine of five hundred dollars for each offense committed. Any agent of any express company or common carrier who shall, in violation of the provisions of this act, deliver to any person in any such State or community as is described above any of the said articles carried in the manner herein forbidden shall be guilty of a misdemeanor and subject to a fine of not less than twenty-five nor more than one hundred dollars for each offense or to imprisonment for not less than ten nor more than sixty days, or to both fine and imprisonment, in the discretion of the court.

SEC. 3. That this act shall go into effect upon and after the date of its passage.

[H. R. 16479, Fifty-ninth Congress, first session.]

A BILL to make spirituous, malt, vinous, and intoxicating liquors of all kinds, in interstate commerce, a special class in such commerce, and to regulate in certain cases the transportation and sale thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That spirituous, malt, vinous, and intoxicating liquors of all kinds, when a part of interstate commerce, shall be a special class in such commerce, and the transportation and sale thereof shall be specially subject to the control and direction of Congress, and that any railroad company, express company, or other

common carrier, or other person who shall, in connection with the transportation of spirituous, vinous, malt, and intoxicating liquors of all kinds from one State or Territory into another State or Territory, collect on, before, or after delivery, from the consignee or other person, the purchase price, or any part thereof of such liquors, or who shall in any manner act as the agent of the consignor or seller of such liquors for the purpose of selling or completing the sale thereof, saving only in the actual transportation and delivery of the same, shall be subject in so doing to all the police powers of the State or Territory into which such liquors are transported and delivered, and for this purpose in all cases of the sale of spirituous, vinous, malt, and intoxicating liquors of all kinds, in interstate commerce, where the same is sold "Collect on delivery," the place of delivery shall be deemed and held the place of sale.

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Wednesday, February 21, 1906.

The committee met at 10.30 o'clock a. m., Hon. John J. Jenkins in the chair.

The committee thereupon proceeded to the consideration of House bills 3159, 13655, 13856, and 16479.

The CHAIRMAN. The committee will be in order. Mr. Dinwiddie will take charge of the side favoring this legislation, and Mr. Hexamer will look after the other side of it. Owing to the fact that Mr. Williams, a Member of Congress, has to go away to-morrow morning, he will be heard first this morning.

We will hear you now, Brother Williams.

STATEMENT OF HON. JOHN SHARP WILLIAMS, REPRESENTATIVE FROM MISSISSIPPI.

MR. WILLIAMS. Mr. Chairman and gentlemen of the committee, the bill to which I shall direct your attention is H. R. 13856, and I will read it, in order that the committee may fully understand its exact provisions [reading]:

"*Be it enacted, etc.,*" "That express companies and other common carriers are prohibited from importing into the United States from any foreign country and from transporting into one State from another State any spirituous, malt, or vinous liquors forbidden by the laws or police regulations of a State to be sold therein, or prohibited by law to be sold in the country or municipality whither they are transported, when such spirituous, vinous, or malt liquors so imported into the United States or so transported into such State, county, or city are carried collect on delivery, or in any manner so that the carrier thereof is charged with the duty of collecting money in payment for the same, or of doing any other act as agent for the seller necessary to complete or perfect the sale."

Section 2 merely prescribes the penalty in accordance with other penalties in the interstate-commerce act.

Now, Mr. Chairman, the object of this legislation, in my opinion, is to do that which was sought to be done by the Congress of the United

States in the enactment of the so-called Wilson Act, which followed upon the decision of the Supreme Court in the so-called Original Package cases, to some parts of which I shall direct the attention of the committee in a moment.

The words of the original Wilson Act are very broad. They subject to the police powers of the States all vinous, spirituous, and malt liquors transported into a State—mark how broad the language is—“for sale, consumption, or storage.” Now, Mr. Chairman, it is evident to you as a lawyer that an express company acts as a common carrier up to the point where it has brought the package into the place of delivery. Then, when it holds it there in order that the conditions of delivery may be complied with, it has ceased to act under the liabilities of a common carrier and begins to act under the liabilities of a warehouseman, and it is storing the liquor.

It is also evident to you, Mr. Chairman, that whatever may be the technical law of the case, in the court of ethics and of fact, when one person, natural or artificial, undertakes to perform a service for another and undertakes as a part of that service to do a part of the work which the other man otherwise would have to do, the first person is acting as agent for the second. It is evident that in the court of ethics and of fact an express company which undertakes to deliver certain goods, but, prior to delivery, to see to it that certain payments are made, is acting for the purpose of collecting the money as the agent of the shipper.

It is sometimes well, Mr. Chairman, to know the animus of the witness. I am not a prohibitionist. I sometimes think I would, perhaps, be a better man if I were; but I am not. But I am, perhaps, an almost fanatical advocate of local self-government. I believe thoroughly that the maintenance of liberty everywhere depends upon the very largest possible measure of local self-government, and especially in cases affecting the health and morals of the people, so called police cases; that they ought to be regulated altogether by the locale as far as it is possible to have them regulated in accordance with the laws, including the organic law of the country in which you live. That is my standpoint toward this matter.

It seems to me that the Supreme Court made a mistake in two cases. However, it never lies in a lawyer's mouth to make his guess against the guess of the court, because the court has the last guess and the ultimate guess and the controlling guess about law points.

I want to call your attention first, Mr. Chairman, to this point: In this case of the express company (there were two cases against the State of Iowa, decided at the October term, 1904) the Supreme Court seems to have had it in its mind that a decision in that particular matter might have affected a vast body of commerce, bills of lading commerce, where the collection was to be made later on—all C. O. D. deliveries of every description, no matter what the subject-matter of delivery. It seems to me to have neglected to consider the figure which the Wilson Act itself cut in that matter. Already this particular subject-matter of alcoholic liquors had been segregated, by the Wilson Act itself, from the great body of things which were carried in interstate commerce. Congress had concluded, in its wisdom, that this subject-matter ought to be treated from a different standpoint and in a different way. The Supreme Court seems to me to have taken no cognizance of that matter, and it seems not to have been dwelt upon by the attorneys below, except by one, in a rather cursory way.

Mr. LITTLEFIELD. What are those cases, please?

Mr. WILLIAMS. One of them is the case of the American Express Company *v. Iowa*; the other is the case of the Adams Express Company *v. Iowa*. I will read later on parts of the decisions that will bring out the points I am making.

Mr. HENRY. What report do you read from?

Mr. WILLIAMS. The Original Package Case, in 196 U. S. I will read later the parts of these decisions that in my opinion reenforce what I am saying to you.

A great deal has been said about the power of Congress to delegate to a State, as it is expressed, "the interstate-commerce power." That is not a fair expression of what was sought to be done in the Wilson Act or of what is sought to be done in this bill.

The court having decided that the States, notwithstanding their police power, could not make certain regulations, Congress was resorted to, not to delegate to the States the right to make them, but to make the regulations themselves, and if they happened to be cooperative with the State regulations all the better. That did not vitiate the action of Congress in the slightest degree. And that Congress has power to pass such legislation as it chooses, even though it does it with the express view of aiding the State, there can be, in my opinion, no doubt from reading the Original Package case, certain parts of which I will read later on. In fact, we have already in that case attempted to do what I am trying here to complete.

I understand that in one of Mr. Littlefield's bills there is a provision declaring the situs of a C. O. D. delivery sale to be at the place of delivery; and it may be thought by some of you that that will meet this evil. But I will read you in a moment from this case of the Express Company *v. Iowa* to show you that the court said in that case that however that might be, whatever might be the place of sale, whether in Iowa or whether in Illinois, it was not necessary to pass upon; that the contract for sale and delivery, which was the interstate-commerce contract, undoubtedly took place in the State of Illinois. So that in that case, even if the court had determined that the sale itself was a sale in Iowa, it would still have held that the interstate-commerce clause of the Constitution shielded and protected the transaction, because the contract to sell and deliver was undoubtedly made in the State of Illinois. There is nothing that can meet the evil that I am coming to now except the direct legislation proposed in this bill, although that provision will be of the highest utility in many other ways.

What is the evil? I hear a great many people say that the States are coming to Congress because they are acknowledging their own ineffectiveness and impotency, their own inability, to execute their own laws. There has never been but one thing that has prevented a majority of the counties in the State of Mississippi from executing their local-option laws, and that was the interstate-commerce clause of the Constitution of the United States and the decisions of the courts thereupon. We are not asking you to help execute them, although if we did it would be no shame that we should. Why should it be a charge against national legislation that it is cooperating with State legislation for the purpose of accomplishing a State legislative purpose?

Now, in how far is dealing in liquor lawful and in how far is it unlawful?

It is a lawful business sometimes and sometimes it is an unlawful business. It is not made lawful or unlawful by act of Congress, except in the District of Columbia, the Territories, the military reservations, and on shipboard. It is made unlawful, where unlawful at all, by the act of a State, or, under State law, by the act of a community in a local-option election. Wherever it is unlawful Congress certainly ought not to contribute to its carrying on. It ought not to contribute to its carrying on either by legislative action or by legislative non-action. And that is what the Congress of the United States thought in passing the Wilson Act. That matter I will come to. That the power of Congress to pass legislation of this sort is undoubted I will not say; but that the power of Congress to pass it is the better opinion I will assert, and I think I can show that from the Original Package case. I myself have no doubt about the power of Congress to regulate interstate commerce as fully as it can regulate foreign commerce. They are both given in the same clause in the Constitution in the same breath, and they go exactly to the same limit.

I have no doubt that Congress can regulate interstate commerce except where it clashes against the police power of a State to regulate the public health and the public morals. It seems to me that originally the Supreme Court ought to have held—it did not—that with regard to the sale of liquor it fell in the same category as quarantine matters and matters of that sort, because by the universal consensus of the legislative mind, not only here but in Great Britain and everywhere else in the world, not only among the English-speaking race, but elsewhere, the subject-matter had been set aside in a special category as, in the common opinion, having a tendency to injure public health and public morals. And even those of us who are not total abstainers or prohibitionists know that it has no great tendency to the contrary, at any rate.

Now, Mr. Chairman, upon this question of the impotency of the State, I want to tell the committee something that took place in my own little town. My son-in-law is mayor of the town—quite a young fellow, not a prohibitionist himself, but believing that it is always a gentleman's duty when in official position, to execute the laws whatever they are, whether they are laws that he would have voted for or not. He proceeded to attempt to execute the prohibition laws in that little town. We had about 19 so-called "blind tigers." In less than six months—less than three months, in fact—there were not any, and we went along without any until the Supreme Court decided this very identical case.

Drummers would come there and they would say that they could not get a drink of anything for \$5. You could not pay a hotel porter \$5 and get a drink. It was impossible to get one in the little town. Immediately upon the decision of this case the express company became a warehouse for the receipt and retention of liquor shipped sometimes to A and B and C, sometimes shipped to No. 1 and No. 2 and No. 3, in that way, and this man or that or the other would come around with an authority from the man who was identified by the liquor seller's letter as No. 1, 2, or 3 and get out his jug of whisky. The administration was of course rendered absolutely helpless, because you will see in a moment that the Supreme Court of the United States not only decided in one of these express company cases that the local officer could not seize and destroy the stuff under the State law, but

that the law of the State declaring the keeping of whisky for sale a nuisance could not be executed for the same reason.

Mr. ALEXANDER. May I ask you a question, Mr. Williams?

Mr. WILLIAMS. Certainly, sir.

Mr. ALEXANDER. Suppose you live in a prohibition State and a prohibition county; you go up to Cincinnati and buy a jug of whisky, and pay for it to be shipped to your home.

Mr. WILLIAMS. Yes; this bill does not interfere with that. I am not seeking to interfere with that, and I do not think it ought to be interfered with. Now, right there, the question may be asked why one stands on a different ground from another, and I will tell you.

The man who is ordering a jug of whisky or a case of beer or a case of wine for his own consumption either pays for it or receives it to be remitted for in the ordinary course of business. It is not sent to him C. O. D. There is not one case in a hundred where that is the case. The man who is engaged in the illicit selling of whisky in the community contrary to the law of that particular community generally has it shipped C. O. D. for two reasons: First, I am sorry to say, he is not the character of man that the whisky company would like to credit upon a general account, so he must pay for his goods before he gets them out; secondly, he is generally not the man that can remit for a large quantity of liquor at once. You will find in one of these cases here in the Supreme Court that the shipment was of goods to the value of \$500 or \$600.

Therefore the whisky is shipped to the express company, and the man takes it out as he sells it, or other people take it out as he sells it to them upon his order for delivery, you understand. So that the liquor dealer in the other State is enabled to do business with this man, and he could not do business with him upon any other basis except the C. O. D. basis—first, because the man can not remit (he seldom has a large enough amount of money to pay for a large quantity), and secondly, because the liquor house would not credit him.

Mr. HENRY. Does your State local option or prohibition law attempt to prevent, or do you know of any State local-option law that does attempt to prevent, an individual from shipping liquor into his home for his own consumption and use?

Mr. WILLIAMS. No, sir; and I know of none that does.

Mr. HENRY. Your statute does not touch that point at all?

Mr. WILLIAMS. Oh, no. No law in any State, so far as I know, ever has attempted to do that.

Mr. CLAYTON. You do not think that such a law would be valid, do you?

Mr. WILLIAMS. I do not know whether it would be valid or not. I do not know about that, but I think it would be very unwise and very tyrannical and very oppressive. I do not think any government under the sun has the right to do that. A government has a right to pronounce a business unlawful and illegal and to prevent that business from being carried on if, in the opinion of the government, it is dangerous to public health or morals.

Mr. HENRY. I think several State courts have held that could not be prevented anyhow.

Mr. WILLIAMS. I think it could be prevented; but whether it could or not, nobody has ever thought of doing it.

Mr. GILLET. Would not the bill that you have here have the effect of preventing its being shipped to a person for his own personal use.

Mr. WILLIAMS. Oh, no; no, sir.

Mr. HENRY. Your bill says "to be sold therein," does it not?

Mr. WILLIAMS. Oh, it stops the whole C. O. D. business.

Mr. HENRY. It says "to be sold therein," not for consumption, but shipped into the the State 'to be sold therein?'

Mr. WILLIAMS. Yes; but this bill is confined altogether to the C. O. D. business, you understand.

Mr. GILLETT. It is a little different from the other bill that was presented?

Mr. WILLIAMS. Yes, sir; it is confined to C. O. D. transactions.

Now, Mr. Chairman, I am addressing a body of lawyers; and, by the way, without giving you any "taffy," I doubt whether there is an equal body of lawyers anywhere much superior to you as lawyers, and therefore it is not necessary for me to go into all the legal details of this matter.

This question is sometimes asked: "If you start upon this legislation, where will it end?" Some gentleman the other day said: "Why, do you think that Congress would have a right to forbid the shipment of flour or meal or bread or meat into a State C. O. D.?" I answered, with that frankness that I attempt always to possess myself of, that I thought Congress would have the power to do it, but that Congress would never be fool enough to do it. And when you ask the question where these things are to end, the answer is: "They are to end where they begin, in the common sense and discretion of Members of Congress, who are sent here by the people, who are not presumed to send fools." It will end where it begins, in the discretion of Congress; and there is no danger whatsoever of Congress ever treating things that are healthful and necessary to life in the same way that it treats things that are per se harmful, or subject to abuse, at any rate, or with a tendency to abuse that makes them harmful.

Mr. PARKER. Why should not all articles delivered C. O. D. be subject to the police power? Take unhealthy flour, or opium, for instance.

Mr. WILLIAMS. Oh, well, if it is unhealthy flour it is already subject to it.

Mr. PARKER. Or take cigarettes, for instance.

Mr. WILLIAMS. If it is unhealthy flour it is already subject to it. I do not suppose there is a State in the nation with any police regulations at all that can not destroy spoiled flour and prevent it from being sold, and not only prevent it from being sold, but punish the man who sells it.

Mr. PARKER. I am speaking of the delivery under interstate commerce; they can not stop it until it is delivered.

Mr. WILLIAMS. Whether they can or not, that would be a question for the discretion of Congress; and the question that I am now putting to your discretion is this particular question.

Mr. LITTLEFIELD. Your proposition is that it would be a question as to whether the occasion existed for the exercise of this broad power?

Mr. WILLIAMS. Oh, of course, if the danger is sufficiently great, if the crisis is sufficiently acute, Congress can exercise the power which it undoubtedly has; and if it is not, Congress will not exercise it. In a matter of this sort it will require great abuse to make Congress exercise it.

Now, Mr. Chairman, the abuse has been there. I know whereof I speak, personally. I am not a prohibitionist, but I do not like the

idea of letting outside authority turn my little town into what it does not want to be. Whether it is wise or unwise to make a local-option law, the law, after it is once put upon the statute books, ought to be executed, and there ought to be no action or nonaction upon the part of the Congress of the United States that would interfere with its execution by the local authorities. What we say here is, Let the State alone; leave it free to execute its law, and to do what, in my opinion, the Wilson Act sought to do, and what the members of Congress who voted for it thought they had done by its enactment.

I do not think there is any trouble about the power. The only question is, Will you exercise the power?

It is said by some—I do not know why—that it will not help the situation. If it will not help the situation, it is rather curious that everybody who is in favor of the execution of the law—the prohibitionist because they are in favor of the law; other people who are not prohibitionist because they are in favor of the execution of law—wants the legislation; while all the liquor sellers and the beer men and the whisky men and the representatives of districts that are devoted to beer selling and whisky selling are opposing the legislation. It seems to me that is sufficient upon that particular point.

Now a few words about the law.

Mr. ALEXANDER. Mr. Williams, your bill does not inhibit the sale of liquor. Liquor may be carried in by an express company and left at a wholesale store?

Mr. WILLIAMS. No, sir.

Mr. ALEXANDER. And then sold?

Mr. WILLIAMS. No, sir.

Mr. ALEXANDER. Your bill does not prohibit that?

Mr. WILLIAMS. My bill does prohibit its being delivered C. O. D. in the prohibition territory.

Mr. ALEXANDER. I know; but suppose it is not delivered C. O. D.

Mr. WILLIAMS. Oh, well, it does not interfere with that. Any man outside can ship liquor in. This interferes only in these C. O. D. cases. The idea in my mind was that in a case of this sort—as a matter of fact and as a matter of ethics the express company is acting as the agent for the foreign liquor seller for the purpose of completing the transaction of sale by collecting the money.

The idea in my mind was that if the State had made the business unlawful there the shield of protection of the interstate-commerce clause ought not to be thrown about a corporation so that it could act as the agent of anybody else in order to do an unlawful thing. In other words, that without legislation of Congress, Congress was helping the liquor seller in the foreign State to violate the law of the State by enabling a common carrier to act as his agent. And as a matter of fact these express companies are engaged in the liquor-selling business as agents of the seller. I do not mean that they get any profit out of selling the liquor, you understand; all they get out of it is their transportation charge; but without them this thing could not go on. They are as necessary a link in the transaction as the original seller or the ultimate consignee.

Now, gentlemen, I want to go back to the old case of *Leisy v. Hardin*, which was the Original Package case. I suppose you all remember the facts in that case. That was a case where intoxicating liquors were seized under the law of the State and were destroyed. There were 122 quarter barrels of beer, 171 eighth barrels of beer, 11 sealed

cases of beer, and the whole value ran up to some nearly \$900. The thing upon the very face of it was not sent to anybody for the purpose of consumption, and it was a fraud *ab initio*. I will not read the facts in the case, because I take it for granted that you all know about what they were. Now, there are some utterances there that I want to call your attention to.

First, to the law of the State. It was said the other day that the States could pass laws. Why, they passed all the laws—and I will read you this particular law in a minute to show you how strict it was. The State of Mississippi punishes the agent of the seller—just exactly what the express company in this case practically is. They have also a punishment for one who acts as agent of the buyer. The express company certainly is one or the other of these two things; and yet, shielded by the interstate-commerce clause, it could not be punished.

This is the State section upon which the Supreme Court decided, and I read it to you to show you how strict it was:

“No person shall manufacture or sell, by himself, his clerk, steward, or agent, directly or indirectly, any intoxicating liquors except as hereinafter provided. And the keeping of intoxicating liquor, with the intent on the part of the owner thereof, or any person acting under his authority, or by his permission, to sell the same within this State contrary to the provisions of this chapter, is hereby prohibited, and the intoxicating liquor so kept, together with the vessels in which it is contained, is declared a nuisance, and shall be forfeited and dealt with as hereinafter provided.”

Certainly the State could not have any more law upon that question.

Then section 1553 of the code of Iowa forbade any common carrier to bring within the State of Iowa for any person or persons or corporations any intoxicating liquors from any other State or Territory of the United States without being first furnished with a certificate under the seal of the county auditor certifying that the consignee or person to whom such liquor was to be transported, conveyed, or delivered was authorized to sell intoxicating liquors in such State. That was declared absolutely unconstitutional, and, in my opinion, it undoubtedly was.

Now let us see the opinion of the court in that case, so that we may come to the exact point. I will read this part of it [reading]:

“The power vested in Congress ‘to regulate commerce with foreign nations, and among the several States, and with the Indian tribes,’ is the power to prescribe the rule by which that commerce is to be governed, and is a power complete in itself, acknowledging no limitations other than those prescribed in the Constitution. It is coextensive with the subject on which it acts and can not be stopped at the external boundary of a State, but must enter its interior and must be capable of authorizing the disposition of those articles which it introduces, so that they may become mingled with the common mass of property within the territory entered.

“And while, by virtue of its jurisdiction over persons and property within its limits, a State may provide for the security of the lives, limbs, health, and comfort of persons and the protection of property so situated, yet a subject-matter which has been confided exclusively to Congress by the Constitution is not within the jurisdiction of the police power of the State, unless placed there by Congressional action.”

Mark that language, now—"unless placed there by Congressional action." [Reading:]

"The power to pass laws in respect to internal commerce, inspection laws, quarantine laws, health laws, and laws in relation to bridges, ferries, and highways belongs to the class of powers pertaining to locality, essential to local intercommunication, to the progress and development of local prosperity, and to the protection, the safety, and the welfare of society originally necessarily belonging to and upon the adoption of the constitution reserved by the States, except so far as falling within the scope of a power confided to the General Government. Where the subject-matter requires a uniform system as between the States, the power controlling it is vested exclusively in Congress and can not be encroached upon by the States; but where, in relation to the subject-matter, different rules may be suitable for different localities, the States may exercise powers which, though they may be said to partake of the nature of the power granted to the General Government, are strictly not such, but are simply local powers, which have full operation until or unless circumscribed by the action of Congress in effectuation of the general power."

I want to call your attention to everything in this decision which shows the power of Congress to act in cooperation with the States. [Reading:]

"Whenever, however, a particular power of the General Government is one which must necessarily be exercised by it and Congress remains silent, this is not only not a concession that the powers reserved by the States may be exerted as if the specific power had not been elsewhere reposed"—

And in making this distinction between these two different subject-matters the court in this case put liquor selling within the second class of those things that were national and those things that were a part of interstate commerce. Now, with regard to that class of things, the court say:

"Whenever * * * Congress remains silent, this is not only not a concession that the powers reserved by the States may be exerted as if the specific power had not been elsewhere reposed, but, on the contrary, the only legitimate conclusion is that the General Government intended that power should not be affirmatively exercised."

In other words, as long as Congress remains silent and does not enact any legislation upon this topic, in the opinion of the Supreme Court of the United States, that is to be construed as the expression of the intention upon the power of Congress that the power should not be exercised by the State, and the action of the State can not be permitted to effect that which would be incompatible with such intention—that is, such assumed intention. [Reading:]

"Hence, inasmuch as interstate commerce, consisting in the transportation, purchase, sale, and exchange of commodities, is national in its character, and must be governed by a uniform system, so long as Congress does not pass any law to regulate it or allowing the States so to do, it thereby indicates its will that such commerce shall be free and untrammelled."

The court goes on to say that in *Brown v. Maryland*, another case, the act of the State legislature drawn in question was held invalid as repugnant to the prohibition of the Constitution upon the States to lay

any impost or duty upon imports or exports, and to the clause granting the power to regulate commerce. They say that in that case Congress had acted, and acted fully, upon the subject of importations, and that case is to be distinguished from some interstate-commerce cases, Congress not having acted fully or at all as to that particular question as to interstate commerce.

Now, there is something else here I want to read you.

The Supreme Court (Mr. Justice Matthews pronouncing the opinion) in the case of *Bowman v. Chicago and Northwestern Railroad* uses this language:

“Any State, Territory, district, city, or town within the United States’ should not be prevented by the language used ‘from regulating or from prohibiting the traffic in or transportation of those substances between persons or places lying or being within their respective territorial limits, or from prohibiting the introduction thereof into such limits for sale, use, or consumption therein.’”

This language, he says, is referred to as indicative of the intention of Congress that the transportation of commodities between the States shall be free, except where it is positively restricted by Congress itself, or by States in particular cases by the express permission of Congress.

I read you that because I want you to see how far the court has gone, not only in the line of saying that Congress could pass affirmative laws which in their spirit and tendency and effect would be cooperative with the State regulation, but that Congress could delegate to the State the power to control the particular question, upon the theory, I suppose, that the action of the State legislature would become just as much the act of Congress as if set out in the act itself. But, at any rate, that is as far as they go in that particular line.

Mr. PARKER. May I ask you a question, Mr. Williams?

Mr. WILLIAMS. Yes, sir.

Mr. PARKER. It is not a release rather than a delegation?

Mr. WILLIAMS. I have just said, a moment ago, that we never had thus far delegated, and this bill does not undertake to delegate; but while I was going into that matter I wanted to show you how far the Supreme Court had “squinted” even, toward that.

Mr. PARKER. But they release that power to the State?

Mr. WILLIAMS. Oh, undoubtedly that is not a delegation. This is an affirmative act of Congress bearing upon a corporation engaged in interstate commerce, and saying that it shall not do a certain thing.

Mr. PARKER. I am not talking of that. Has not Congress the right to release its own power over it to the State, rather than to delegate it?

Mr. LITTLEFIELD. That is, to remove the inhibition?

Mr. WILLIAMS. I am just reading that to show how far the Supreme Court had gone in expressing an opinion just to that effect.

Here, again, let me read this part of the opinion in *Leisy v. Hardin* [reading]:

“The conclusion follows that, as the grant of the power to regulate commerce among the States, so far as one system is required, is exclusive, the States can not exercise that power without the assent of Congress and, in the absence of legislation, it is left for the courts to determine when State action does or does not amount to such exercise, or, in other words, what is or is not a regulation of such commerce.”

Now, gentlemen, I hate to weary you with reading this. I will have to read this, I think, because some of it leads up to the balance; and I can not read the particular thing I want without leading up to it.

In *Mugler v. Kansas* the court said that it could not "shut out of view the fact, within the knowledge of all, that the public health, the public morals, and the public safety may be endangered by the general use of intoxicating drinks; nor the fact, established by statistics accessible to every one, that the idleness, disorder, pauperism, and crime existing in the country are, in some degree at least, traceable to this evil." And that "if in the judgment of the legislature (of a State) the manufacture of intoxicating liquors for the maker's own use, as a beverage, would tend to cripple, if it did not defeat, the effort to guard the community against the evils attending the excessive use of such liquors, it is not for the courts, upon their views as to what is best and safest for the community, to disregard the legislative determination of that question. * * * Nor can it be said that government interferes with or impairs anyone's constitutional rights of liberty or of property, when it determines that the manufacture and sale of intoxicating drinks, for general or individual use, as a beverage, are, or may become, hurtful to society, and constitute, therefore, a business in which no one may lawfully engage."

Now, listen especially to this. I want your attention to this part of it, Mr. Chairman. [Reading:]

"Undoubtedly it is for the legislative branch of the State governments to determine whether the manufacture of particular articles of traffic, or the sale of such articles, will injuriously affect the public, and it is not for Congress to determine what measures a State may properly adopt as appropriate or needful for the protection of the public morals, the public health, or the public safety; but notwithstanding it is not vested with supervisory power over matters of local administration the responsibility is upon Congress, so far as the regulation of interstate commerce is concerned, to remove the restriction upon the State in dealing with imported articles of trade within its limits, which have not been mingled with the common mass of property therein, if in its judgment the end to be secured justifies and requires such action."

That was the language which led to the enactment of the Wilson bill. Mark it:

"But notwithstanding it (that is, Congress) is not vested with supervisory power over matters of local administration, the responsibility is upon Congress, so far as the regulation of interstate commerce is concerned, to remove the restriction upon the State."

That is, that the responsibility was not upon the court, but was upon Congress, as the legislative branch of the Federal Government—

"To remove the restriction upon the State in dealing with imported articles of trade within its limits which have not been mingled with the common mass of property therein, if in its judgment the end to be secured justifies and requires such action."

Then, if you will read on the bottom of page 124 and on the top of page 125, you will find again, without Congressional permission in one case, and in another one the duty is recognized on the part of the Federal Government of frank and candid cooperation for the general good—that phrase is used—the Federal Government ought to engage in a frank and candid cooperation for the general good.

Upon those opinions of the judges in that case the Wilson law was enacted.

I read you a moment ago an extract showing how full the language of that Wilson law is; and yet the Supreme Court has decided in these two cases that that did not accomplish the purposes with regard to this C. O. D. business.

Now let me go to these two C. O. D. cases. Let me read you first the facts in the first of these cases.

"The American Express Company received at Rock Island, Ill., on or about March 29, 1900, four boxes of merchandise to be carried to Tama, Iowa, to be there delivered to four different persons, one of the packages being consigned to each. The shipment was C. O. D., \$3 to be collected on each package, exclusive of 35 cents for carriage on each. On March 31 the merchandise reached Tama, and on that day was seized in the hands of the express agent. This was based on an information before a justice of the peace, charging that the packages contained an intoxicating liquor held by the express company for sale."

Now, remember, it is a well-settled matter of law, though I have not the authority by me now—I need not have for lawyers of your ability—that an express company acts in a double capacity; it acts as a carrier and acts as a warehouseman, and its liability as a carrier ceases when the goods are gotten to the place safely, and then it begins to keep them as a warehouseman, and its liabilities as a warehouseman begin. So that these people charged that these goods were kept by the express company for sale, not in its capacity as a common carrier being kept for sale, but in its capacity as a warehouseman being kept for sale—that is, being kept in their hands until a man came around with a certain amount of money to complete the sale and obtain a right to the delivery.

Mr. ALEXANDER. What decision are you reading from, Mr. Williams?

Mr. WILLIAMS. This is the American Express Company *v.* Iowa, page 134, 196 U. S. I am reading the agreed facts upon which the court decided the case. [Reading:]

"The express company and its agent answered, setting up the receipt of the packages in Illinois, not for sale in Iowa, but for carriage and delivery to the consignees. An agreed statement of facts was stipulated admitting the receipt, the carriage, and the holding of the packages as above stated. The seizure was sustained. Appeal was taken to a district court. The express company and its agent amended their answer, specially setting up the commerce clause of the Constitution of the United States. There was judgment in favor of the express company, and the State of Iowa appealed to the supreme court and obtained a reversal."

That is, the supreme court of Iowa. This writ of error was then prosecuted. Then there follows the argument of counsel, and all that. Now I will read you the decision of the court.

Right here, Mr. Chairman, before I read the decision of the court, remember what the provisions of the Wilson Acts were. It is strange to me that the court does not bring the Wilson Act into consideration in arriving at its conclusion; only one counsel mentions it, and he

merely quotes its provisions. Under the Wilson Act "all fermented, distilled, or other intoxicating liquors transported into any State or remaining therein for use, consumption, sale, or storage, are, upon arrival in such State, subject to the operation and effect of the laws of the State to which they are shipped, and subject to the police powers of such State, to the same extent as domestic property therein, whether such liquors are transported in original packages or otherwise."

Such is the language of the Wilson Act that was passed to cure the difficulty in this very *Leisy* case, the *Original Package* case that I was reading from a moment ago, and in response to the suggestions of the Supreme Court itself that Congress could legislate, and that responsibility was upon Congress for legislating or not legislating.

Mr. Justice White delivered the opinion of the court. [Reading:]

"Although the majority of the supreme court of Iowa doubted the correctness of a ruling previously made by that court, nevertheless it was adhered to under the rule of *stare decisis*, and was made the basis of the decision in this cause. In the previous case it was held by the supreme court of Iowa that, where merchandise was received by a carrier with a duty to collect the price on delivery to the consignee, the merchandise remained the property of the consignor, and was held by the carrier as his agent with authority to complete the sale.

"Upon this premise it was decided that intoxicating liquors shipped C. O. D. from another State were subject to be seized on their arrival in Iowa in the hands of the express company. Sustaining upon this principle the seizure in this case, the supreme court of Iowa did not expressly consider the defense based on the commerce clause of the Constitution of the United States, because the court deemed that its ruling on the subject of the effect of the C. O. D. shipment was a wholly non-Federal ground, broad enough to sustain the conclusion reached. And this the court considered was sanctioned by *O'Neil v. Vermont*, 144 U. S., 324.

"In accord with the opinion of the supreme court of Iowa, it is insisted at bar that this writ of error should be dismissed for want of jurisdiction, because the decision below involved no Federal question, and the case of *O'Neil v. Vermont*, *supra*, is relied upon. The contention is untenable. As pointed out in *Norfolk and Western Ry. Co. v. Sims*, 191 U. S., 441, the view taken of the *O'Neil* case is a mistaken one. True, in that case, the supreme court of Vermont gave to a C. O. D. shipment the effect attributed to by the supreme court of Iowa in this case. True, also, a writ of error was prosecuted from this court to the Vermont court upon the assumption that the commerce clause of the Constitution was involved, but this court dismissed the writ of error because it did not appear that the commerce clause of the Constitution was relied on in the State court, was in any way called to the attention of that court, or was passed upon by it.

As on this record it appears that the protection of the commerce clause was directly invoked in the State court, it is apparent that the *O'Neil* case is inapposite. And as, in order to decide the contention that the judgment below rests upon an adequate non-Federal ground, we must necessarily consider how far the C. O. D. shipment was protected by the commerce clause of the Constitution, which is the

question on the merits, we pass from the motion to dismiss to the consideration of the rights asserted under the commerce clause of the Constitution."

Then the opinion goes on and discusses the case of *Bowman v. Chicago and Northwestern Railway Company*, and discusses *Leisy v. Hardin*, into which I have fully gone a moment ago. Then the opinion takes up *Rhodes v. Iowa*, and that I will read you because it comes in rather pertinently here [reading]:

"In *Rhodes v. Iowa*, 170 U. S., 412, the same doctrine was reiterated, except that it was qualified to the extent called for by the provisions of the act of Congress of August 8, 1890, 26 Stat., 313, commonly known as the Wilson Act. In that case a shipment of intoxicating liquors had been made into the State of Iowa from another State, and the agent of the ultimate railroad carrier in Iowa was proceeded against for an alleged violation of the Iowa law, because when the merchandise reached its destination in Iowa he had moved the package from the car in which it had been transported to a freight depot, preparatory to delivery to the consignee. The contention was that, as by the Wilson Act, the power of the State operated upon the property the moment it passed the State boundary line; therefore the State of Iowa had the right to forbid the transportation of the merchandise within the State and to punish those carrying it therein. This was not sustained."

Of course it ought not to be.

"The court declined to express an opinion as to the authority of Congress, under its power to regulate commerce, to delegate to the States the right to forbid the transportation of merchandise from one State to another. It was, however, decided that the Wilson Act manifested no attempt on the part of Congress to exert such power, but was only a regulation of commerce, since it merely provided, in the case of intoxicating liquors, that such merchandise when transported from one State to another should lose its character as interstate commerce upon completion of delivery under the contract of interstate shipment and before sale in the original packages."

"Completion of delivery under the contract of interstate shipment"—thus sidetracking the question of where the sale took place, and putting it upon the ground of where the contract took place.

Then it goes on to discuss the *Vance v. Vandercook Company* case, which I will skip. [Reading:]

"Coming to test the ruling of the court below by the settled construction of the commerce clause of the Constitution, expounded in the cases just reviewed, the error of its conclusion is manifest. Those cases rested upon the broad principle of the freedom of commerce between the States and of the right of a citizen of one State to freely contract to receive merchandise from another State, and of the equal right of the citizen of a State to contract to send merchandise into other States. They rested also upon the obvious want of power of one State to destroy contracts concerning interstate commerce, valid in the States where made. True, as suggested by the court below, there has been a diversity of opinion concerning the effect of a C. O. D. shipment, some courts holding that under such a shipment the property is at the risk of the buyer, and therefore that delivery is completed when the merchandise reaches the hands of the carrier for transportation"—

"At the risk of the buyer, and, therefore, that delivery is completed

when the merchandise reaches the hands of the carrier for transportation." That would make it a sale in the State whence it was shipped. [Reading:].

"Others deciding that the merchandise is at the risk of the seller, and that the sale is not completed until the payment of the price and delivery to the consignee at the point of destination."

After stating that—I call your especial attention to this, Mr. Littlefield—after stating that, and this diversity of opinion, it says:

"But we need not consider this subject. Beyond possible question the contract to sell and ship was completed in Illinois. The right of the parties to make a contract in Illinois for the sale and purchase of merchandise, and in doing so to fix by agreement the time when the condition on which the completed title should pass, is beyond question. The shipment from the State of Illinois into the State of Iowa of the merchandise constituted interstate commerce. To sustain, therefore, the ruling of the court below would require us to decide that the law of Iowa operated in another State, so as to invalidate a lawful contract as to interstate commerce made in such other State; and, indeed, would require us to go yet further and say that, although under the interstate commerce clause, a citizen in one State had a right to have merchandise consigned from another State delivered to him in the State to which the shipment was made, yet that such right was so illusory that it only obtained in cases where in a legal sense the merchandise contracted for had been delivered to the consignee at the time and place of shipment.

"When it is considered that the necessary result of the ruling below was to hold that wherever merchandise shipped from one State to another is not completely delivered to the buyer at the point of shipment so as to be at his risk from that moment the movement of such merchandise is not interstate commerce, it becomes apparent that the principle, if sustained, would operate materially to cripple if not destroy"—

Mr. Chairman, this is what I called your attention to a moment ago. The court seems to have left completely out of consideration the fact that Congress had already segregated this particular subject-matter from other subject-matters upon which interstate commerce operated; and it seems to think that if they had decided in a liquor case with the Wilson Act upon the statute book that this C. O. D. delivery was a sale within the State, and therefore unlawful by the Wilson Act itself, that it would affect all other sorts of commerce. (Reading:)

"It becomes apparant that the principle, if sustained, would operate materially to cripple if not destroy that freedom of commerce between the States which it was the great purpose of the Constitution to promote."

What I want to do in this bill is to go further and again segregate, so that there may be no doubt of construction, even, about the proposition that the forbidding of this particular subject-matter from being transported into a State C. O. D. and thereby effecting a sale within a State contrary to the laws of the State, does not affect any other matter at all. It seems to me that no fair construction could hold that it would, taking into consideration the former action of Congress in the case of the Wilson bill, and the intimation of the court that led up to that action of Congress. But there will be, if this bill is passed, no

doubt upon that question. It applies to nothing but this particular subject-matter; and as the *expressio unius est exclusio alterius* says, it would strengthen the position and the construction by excluding from the operation of a like construction other articles of commerce.

Mr. ALEXANDER. Mr. Williams, have you observed this brief that has been submitted to us on the Hepburn-Dolliver bill by the Brewers' Association?

Mr. WILLIAMS. No, sir; I have not.

Mr. ALEXANDER. I was going to say that it did not seem to me that your position is different from the position they take.

Mr. WILLIAMS. It seems to you that it is different—is that what you say?

Mr. ALEXANDER. As to 196 United States, under this decision.

Mr. WILLIAMS. Oh, that it is not different. I do not know as to that, sir; I have not read it. I have not had time to look into these other matters. (Reading:)

“It would prevent the citizen of one State from shipping into another unless he assumed the risk; it would subject contracts made by common carriers and valid by the laws of the State where made to the laws of another State, and it would remove from the protection of the interstate-commerce clause all goods on consignment upon any condition as to delivery, express or implied. Besides, it would also render the commerce clause of the Constitution inoperative as to all that vast body of transactions by which the products of the country move in the channels of interstate commerce by means of bills of lading to the shipper's order with drafts for the purchase price attached, and many other transactions essential to the freedom of commerce, by which the complete title to merchandise is postponed to the delivery thereof.”

Now, Mr. Chairman, that is the last, I think.

Mr. BIRDSALL. Will you permit a question?

Mr. WILLIAMS. Yes, sir.

Mr. BIRDSALL. I suppose Congress might have power to provide that no merchandise should be shipped C. O. D.?

Mr. WILLIAMS. It might do it, I suppose; but, as I said a moment ago, a free government of people who govern themselves by their representatives would not be foolish enough to do it.

Mr. BIRDSALL. I understand that, but that case seems to have lost sight entirely of that principle.

Mr. LITTLEFIELD. That eliminates the Wilson law practically altogether.

Mr. WILLIAMS. Absolutely. It does not take it into consideration, except that in construing another case it says that that was decided on the Wilson law.

Mr. LITTLEFIELD. It seems to ignore the existence of the Wilson law.

Mr. WILLIAMS. Now, let me go ahead just a moment:

“As from the foregoing considerations it results that the court below erred in refusing to apply and enforce the commerce clause of the Constitution of the United States, its judgment must be reversed.”

That is the first of these cases.

Mr. BRANTLEY. Is it not true that your bill eliminates any question of conflict between the police power of a State and the commerce power of Congress? Your bill is not a release of any power by Congress?

Mr. WILLIAMS. No; it is an affirmative act by Congress.

Mr. BRANTLEY. It is a direct regulation by Congress of interstate commerce?

Mr. WILLIAMS. It is a direct regulation by Congress of interstate commerce. It is a direct regulation by Congress, and in the only way in which it can be said to have any connection with State regulation at all. It is not a delegation; it is not a release; it is affirmative legislation by Congress, acting within the powers conferred upon Congress by the Constitution to regulate interstate and foreign commerce. The only way in which it can have any connection with State legislation is that it is cooperative in intent, and would be cooperative in effect, with the police regulation of the States; and certainly that is not a sin; that is a virtue. As the Supreme Court says, there ought to be a frank and cordial cooperation for purposes of public good.

Mr. BRANTLEY. Well, Mr. Williams, why not amend your bill so as to say simply that common carriers should not carry C. O. D. any intoxicating liquors from one State into another? That would be a direct regulation without reference to whether a State prohibited the sale of liquor or not.

Mr. WILLIAMS. That is another matter. There again I am a local self-governor. If the community into which the stuff is being shipped allows it to be sold there, I do not think it would be fair and right to forbid a fellow outside of the State from selling it thereto. It is what some people have called my fanatical devotion to local self-government that inspires this bill.

In a community where the stuff is forbidden to be sold, I would forbid it to be carried C. O. D., because practically, ethically, and as a matter of fact it is a sale in that place where the States try to prohibit it. Where the State does not try to prohibit it, where it is a lawful business, allowed by the State or by the community, there is no more reason why a foreign liquor seller should not sell there than there is why a domestic one should not.

Mr. PALMER. This bill does not stop a man from buying liquor if he pays for it when he gets it, does it?

Mr. WILLIAMS. Oh, no; nor does it stop him from ordering it of the liquor house from crediting it, if it chooses; but these "blind-tiger" people are the sort of fellows, you know, that have no credit, and are generally the sort of people that can not pay cash in large amounts. This bill would not interfere with any man's buying liquor in the ways I have just stated.

Mr. CLAYTON. Your bill is solely to break up this C. O. D. business?

Mr. WILLIAMS. It is solely to break up the C. O. D. business, and it is solely to break it up, because practically and actually down there these express companies are engaged in the liquor business. I do not mean they are getting profit out of it, but I mean that they are engaged in it, and they are getting a profit in this way, too, from the carriage, and this very sort of thing is multiplying their carriage very much, so that to a certain extent they are getting a profit out of the business.

Now, gentlemen, there is another thing: Of course, I do not like, when I am aguing a question upon its merits, to bring in any sort of outside considerations to operate as a pressure upon the opinion of those who are to judge whether a given course shall be taken or not. But in some counties in Mississippi and in Louisiana public sentiment

has risen to that point of revolt where I have been afraid that some breach of the peace would take place in order to stop it. Our people are not a very patient sort of people when they think that they are being defied. One express company, I am glad to say, took the high position that it would not engage in the traffic, and it will not let the manufacturers ship the stuff in there. Another one is making a bar-room out of itself in every place, and some of the agents have become frightened and refuse to receive and deliver the stuff, thinking, perhaps, I reckon, that they might be tarred and feathered. But public sentiment is getting to a very high pitch upon the question, and I do not know but what that is a legitimate matter of consideration, too, in connection with the Supreme Court injunction that there ought to be a frank and cordial cooperation. One reason why there ought to be is that when people can not do a thing that they have a right to do by law, they will sometimes do it without law.

Mr. PARKER. May I ask you a question?

Mr. WILLIAMS. Yes, sir.

Mr. PARKER. Have you considered the question whether your bill, as you have drawn it, is not an exercise of police power by the United States?

Mr. WILLIAMS. Oh, yes; I have considered that. It is not. It has nothing to do with the punishment for selling liquor. It has nothing to do with punishing anything excepting a common carrier engaged in interstate commerce doing a certain thing which Congress has the power to forbid being done.

Mr. LITTLEFIELD. Your bill is a regulation of interstate commerce?

Mr. WILLIAMS. Absolutely a regulation of interstate commerce.

Mr. PARKER. I think there is some question on that. Now, I want to put another question—whether it is necessary to prohibit all C. O. D. deliveries, or whether this point would not be met by simply saying that all C. O. D. deliveries, or deliveries otherwise than to the original consignee, should be subject to the law of the State?

Mr. WILLIAMS. No, sir; that would not be sufficient, for this reason. Mr. Parker: It would leave a place for “blind tigers” big enough for a coach and four to go through. You would have to go into the question, then, as to what the man’s intent was in getting the whisky—whether it was to consume it or to sell it, or what not; and you could not do that. It seems to me that it would be impracticable of execution.

Mr. PARKER. Why would it be? I do not quite see that. If liquors are shipped C. O. D., and it is enacted that the delivery of liquor from one man to the other shall be subject to the police laws of the State if it be shipped C. O. D. or if it be delivered to any assignee of the bill of lading, it seems to me that you have hit that matter, because it can only be delivered to the man who originally ordered it, and it is subject to the law of the State.

Mr. WILLIAMS. Oh, well, it can be delivered now. That is just the trouble. That would not cure the evil. You sit down there, for example, and you order the dealers to send you a case of claret. It is pretty evident that you are getting that case of claret for consumption. Suppose you sit down and order them to send you three barrels of beer and thirteen cases of claret and a barrel of whisky. You are the consignee and, of course, under the amendment that you would suggest you would not take the goods out.

Mr. PARKER. No; not of course.

Mr. WILLIAMS. And then the State would have to go to work to watch you; and yet it is very evident from the face of the thing that you are getting those things to sell.

Mr. PARKER. I do not see that, because the State makes any delivery by way of sale illegal; and if the delivery is made subject to the law of the State it is a sale, then, within the State.

Mr. WILLIAMS. Well, I would rather not have that amendment. Of course you gentlemen of the committee are better lawyers than I, and this matter is going to be left with you; but I would rather not. I think that would make the bill ineffective.

Mr. BRANTLEY. Is it true that if your bill becomes a law the people of Mississippi will be relegated for protection against the very evils that they are now complaining of to the United States courts, the United States Government, and would still be as helpless to protect themselves as they were before?

Mr. WILLIAMS. No, no; I think not. I have thought of that, too, Mr. Brantley. Of course, as far as their present powers are concerned, under the police power of the State they would remain in statu quo. That is undoubtedly true. Then, as far as this law is concerned, of course you can not pass a Federal law making a punishment to be inflicted by a State tribunal. That would be impossible. It is true that the punishment—the penalty here—has got to come through the United States courts. But any citizen of Mississippi could make the complaint before a Federal grand jury for the violation of this Federal law, and before the State grand juries or justices of the peace for the violation of the State law. Thus far you are right. There are two tribunals necessary to execute the entire body of the law—this cooperative legislation and the original State legislation. But I do not think that it would be, in spirit, open to the objection that you make.

Mr. CLAYTON. Your bill is just to meet this one particular abuse?

Mr. WILLIAMS. This one particular point; yes.

Mr. CLAYTON. In the operation of the interstate-commerce law, or interstate commerce?

Mr. WILLIAMS. Yes, sir. These people having shielded themselves behind the interstate-commerce clause of the Constitution, and the Supreme Court having decided that it was a legal shield, I merely want Congress to pass a law regulating the matter so that it shall no longer remain a shield.

Mr. CLAYTON. You do not claim that this bill will entirely eradicate or make impossible the "blind tiger" business?

Mr. WILLIAMS. Oh, no.

Mr. CLAYTON. But you think it will go in that direction?

Mr. WILLIAMS. But I do say this: I will say that in any little town, for example, it would do it. We absolutely destroy them until after this decision was pronounced back at the October term, 1904; and then, within less than ten days after that decision, they were shipping the stuff there until the express company was filled up high with it, from Illinois and Missouri and everywhere else—St. Louis, Chicago, Peoria, and everywhere.

Mr. CLAYTON. I think it would go a good way toward remedying it.

Mr. WILLIAMS. Now, then, just one more word, and I am through.

The next one of these two cases follows the first one, on page 147 of 196 U. S. It is just like the other one, except that in that case the

State resorted to a different method of asserting its power over the subject-matter. This was an indictment against the Adams Express Company, and the other one was an indictment against the American Express Company. In the other case, you remember, they took the goods and destroyed them, or held them, rather, for destruction, and a bond was given. They were not actually destroyed under the prohibition law. In this case they proceeded under that clause of the prohibition law which makes keeping them with a view to sale a nuisance. This was an indictment against the Adams Express Company in the court of Iowa for maintaining a nuisance in violation of a section of the code of that State.

"It was charged in the indictment * * * that the Adams Express Company between July and December, 1900, at St. Charles, Madison County, Iowa, used a building for the purpose of selling intoxicating liquors therein, contrary to law, and that the company owned and kept in said building intoxicating liquors with the intent unlawfully to sell them within the State, contrary to an Iowa statute."

The Iowa law had a penalty against the renting or use of a building, you understand, for the purpose of keeping for sale intoxicants.

"There was a plea of not guilty, a trial and verdict of guilty, and a sentence imposing a fine of \$350 and costs. An agreed statement of facts was stipulated, from which it appears that the Adams Express Company was a common carrier, engaged in the express business between the States of Missouri and Iowa."

I need not read the balance of it. That case went up to the Supreme Court under this decision.

"On appeal to the supreme court of Iowa from the judgment of conviction the action of the trial court was approved upon the authority of the case of the State of Iowa against the American Express Company, and at bar it was conceded that the issues in this case 'are identical in every particular' with those which were involved in that case. As we have just reversed the judgment of the supreme court of Iowa in the American Express Company case, it follows, for the reasons stated in the opinion in that case, that the judgment in this must also be reversed."

I simply call your attention to this to show that there is no new law involved in it at all. It went up on a different State statute, but on the same great principle—to wit, that a matter of regulation of interstate commerce, and not the mere assertion of police power, was involved.

Mr. Chairman, I thank you and the committee very much for your attention.

STATEMENT OF ROBERT CRAIN, ESQ., ATTORNEY AT LAW, OF BALTIMORE, MD.

Mr. CRAIN. Mr. Chairman and gentlemen of the committee: The same general principle and the same objections, from a constitutional standpoint, to the bill which has just been discussed by Mr. Williams are involved in what is called the Hepburn-Dolliver bill.

The CHAIRMAN. Some of the gentlemen of the committee would like to know who you are and who you represent, Mr. Crain.

Mr. CRAIN. I represent the United States Brewers' Association as its general counsel. That association comprises 95 per cent of all the brewers of the country.

I have taken the trouble at this hearing to reduce to writing my remarks for the purpose of saving time; also thinking that at least the new members of the present committee might care to examine the law as we see it from our standpoint, and I think probably the quickest way would be for me to read what I have written in that connection. It will not take very long.

"This bill, popularly known as the Hepburn-Dolliver bill, is an attempt to amend an existing law known as the Wilson bill, passed August 8, 1890, by adding ten words to it; but so far-reaching is the legal and practical import of this apparently trifling amendment that if it should become a law and be upheld by the courts it will, in the judgment of many lawyers, have as far-reaching effect on the organic nature of our State and Federal Government as any law placed on the statute books since the civil war. It has now been before Congress for several sessions and its iniquities and supposed virtues have been pretty well thrashed out, but this brief synopsis of objections is filed in the hope that it may be of some service to the new members of the committee:

"The present bill owes its existence to the following facts: Some years ago when one of those reform waves that seem to move in cycles swept over the country, the reform microscope fastened itself on the so-called liquor curse, and a number of States passed prohibition laws, by virtue of which they undertook to prohibit all importations into the State of liquor from other States."

I may say here, in passing, gentlemen, that the bill which Mr. Williams has just discussed has the same object in view as this Hepburn-Dolliver bill and the same object as the bill introduced by Representative Littlefield—to wit, to prevent the shipment of alcoholic liquors into prohibition States. So the discussion of this Hepburn-Dolliver bill is applicable alike to the Williams bill and to the bill introduced by Representative Littlefield, excepting in minor instances, which I shall point out as we proceed with the discussion.

"The question of the constitutionality of one of the features of this State prohibitory legislation came up in the case of *Leisy v. Hardin*, where it was held that spirituous liquors are recognized articles of commerce."

It is well for you to note in this connection, gentlemen (because Mr. Williams took occasion to read this *Leisy v. Hardin* decision at some length), the real points which the court decided and the points which it merely discussed.

In the *Leisy* and *Hardin* case it was held that "spirituous liquors are recognized articles of commerce and that under the interstate-commerce clause of the Constitution a citizen of a prohibition State has the right to import intoxicating liquors from another State and has the right to sell it in original packages:

"Whenever the law of the State amounts essentially to a regulation of commerce with foreign nations or among the States, as it does when it inhibits, directly or indirectly, the receipt of an imported commodity, or its disposition before it has ceased to become an article of trade between one State and another or another country and this, it comes in conflict with a power which in this particular has been exclusively vested in the General Government, and is therefore void."

"Immediately after this decision the Prohibitionists, following a somewhat illogical and contradictory intimation in this opinion, introduced into Congress and had passed the Wilson bill, which is the

present bill practically verbatim, with the words 'for delivery therein,' 'the boundary of,' and 'before and after delivery' left out. That is, it provides:

"* * * That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory (for delivery therein), or remaining therein for use, consumption, sale, or storage therein, shall, upon arrival within (the boundary of) such State or Territory (before and after delivery), be subject to the operation and effect of the laws of such State or Territory, enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

"This act was sustained on May 25, 1891, by the Supreme Court in the case of *Wilkerson v. Rohrer* (140 U. S., 572) as a valid regulation of interstate commerce by Congress; but when the act again came before the court in *Rhodes v. Iowa* (170 U. S., 415) on a different question, it held that 'arrival in the State' meant delivery into the hands of the consignee."

In passing, so that we may carry the two bills along together, I will say that the object of Mr. Williams's bill is to prevent the interstate shipment from reaching the hands of the purchaser. The supreme court in this *Rhodes* case plainly says that the interstate shipment continued until it reached the hands of the consignee or the purchaser.

MR. TIRRELL. May I ask you a question? Did not the court say, in that case of *Rhodes v. Iowa*, that you must consider all the facts appertaining to that particular case, and that the court only decided on all the facts of that particular case, and that the question as to what arrival meant should be determined by the facts of each case?

MR. CRAIN. No; not at all. I do not think you can find any such thing in the case. I have read that case over about twenty times, and I do not think there is any such thing in the case at all.

MR. TIRRELL. Did it not say, in substance, that all of the statement of facts was to be considered, and not any detached statement of facts, in arriving at that decision?

MR. CRAIN. I have quoted from this decision further on at length. That decision said in plain language that the only reason why the Wilson bill was constitutional was because Congress never intended to stop the shipment of liquor until it reached the hands of the consignee.

MR. WILLIAMS. Would the gentleman mind reading the law upon which he bases that assertion?

MR. CRAIN. Yes, sir; I will, with a great deal of pleasure, read that. I think we will come to all that as we go along.

"But when the act (of Congress) again came before the court, in *Rhodes v. Iowa*, on a different question, it held that 'arrival in the State' meant delivery into the hands of the consignee, and that therefore the power of the State could not attach to a shipment of intoxicating liquors from another State 'whilst the merchandise was in transit under such shipment and until its arrival at the point of destination and delivery there to the consignee.'"

I am quoting the words of the decision.

MR. TIRRELL. That was the opinion of the court there—a majority opinion?

Mr. CRAIN. Yes, sir.

Mr. TIRRELL. And there were three judges who dissented from that opinion, were there not?

Mr. CRAIN. I think so. I take it for granted that if it was a decision by the Supreme Court somebody dissented.

Mr. TIRRELL. But you would not be sure, would you?

Mr. CRAIN. Yes; I am sure that in this Rhodes case and in all of these cases there was a dissenting opinion. I will not say it was by three, but probably by three.

Mr. TIRRELL. With the court changed as it is now, you would not be sure that they would decide as the majority did, would you?

Mr. CRAIN. I would not declare positively that the Supreme Court would render a unanimous opinion on any of these questions, because it has not been in the habit of doing it. But we will reach that later.

Mr. WILLIAMS. Mr. Chairman, if the gentleman will permit me, I understood the gentleman to say a moment ago that the Supreme Court somewhere decided that the only reason why the Wilson Act was constitutional was because it did not interfere with the delivery to the consignee. I asked him if he would read the law that supported that assertion. Now, I assert that that case went upon the ground that that was as far as the Wilson bill went, and that nowhere does the Supreme Court say that that is the only reason why the Wilson Act was constitutional. Now, if you will read that act from the Supreme Court you will see.

Mr. CRAIN. In the Rahrer case the plain question was presented as to the constitutionality vel non of the Wilson Act, and the court said that the Wilson Act was constitutional. When the Rhodes case came along, and the Vance and Vandercook case—of course the Rhodes case was on a different point—the court used the exact language which I have put into this brief. It said:

“Whilst the merchandise was in transit under such shipment, and until its arrival at the point of destination and delivery there to the consignee”—delivery in the State to the consignee.

Now, the court said in that case, as I think you will see, Mr. Williams, if you will read it over, if you have not read it lately (I have read it several times)——

The CHAIRMAN. Mr. Crain, some of your friends are objecting to your being interrupted.

Mr. CRAIN. Well, I do not object to it.

The CHAIRMAN. I simply wish to state that if you are going to get into personal conversations with gentlemen present, it is impossible to prevent interruptions. You will either have to address the committee or confine yourself to personal remarks. I am saying this for your benefit.

Mr. CRAIN. All right.

The CHAIRMAN. If the gentlemen discussing this matter do not want to be interrupted, they will have to say so. It is very difficult for the committee to control a matter of this kind. I am only saying now that you had better address yourself to the committee and not to any particular gentleman, so that you will not be so liable to interruption.

Mr. CRAIN. Very well.

“The present bill is designed to overcome this just and equitable interpretation of the Supreme Court by providing that State liquor laws shall become operative upon a shipment of liquor immediately

upon its 'arrival within the boundary of such State or Territory before and after delivery.' In other words, the mere physical arrival of the liquor on the boundary of any State shall make it subject to the operation of State laws, and shall enable any State to empower its officials to confiscate it or destroy it or do as they please with it regardless of the purposes for which it is intended, or of the rights of any individual or of the consignor or consignee."

Now I undertake to discuss what the bill is not.

"Having stated what the bill is, it may be well to state what it is not.

"There is a sort of insidious simplicity and superficial fairness about it that has a tendency to mislead. Its advocates claim that it is simply a proposition to give to the States the right of local self-government, the right of a majority in any community to make their own laws and enforce them."

Quoting from a speech made by Mr. Clayton, the distinguished member of this committee, when this matter was under discussion on the 27th of January, 1903, he said:

"In other words, this amended bill is simply a proposition to restore to the States in this matter full and ample power to enforce their police regulations against the sale of intoxicating liquors; that is the whole question."

"Now, this is precisely what it does not do. It gives the States something to which, under the Constitution, we maintain they are not entitled, and to which, for the reasons to be set forth, they ought not to be entitled."

Mr. CLAYTON. Will you permit me, right there, in fairness to myself, to read you this extract from the report that I presented to the committee on this Hepburn-Dolliver bill? Speaking of the case of Leisy v. Hardin —

Mr. WILLIAMS. What page do you read from?

Mr. CLAYTON. I am reading from the report the committee made at the last session, on page 6. If you have not a copy of it, I have a copy of it here. It is the report that I presented for the committee on the Hepburn-Dolliver bill at the last session of Congress. Speaking of the Leisy v. Hardin case, the report goes on to say:

"To avoid the effect of this decision, and to remove an obstacle resulting from the exclusive control of Congress over commerce among the States, preventing the full operation and effect of the police regulations of the States in regard to intoxicating liquor, Congress passed the act of August 8, 1890, which is hereinbefore set out in this report. It was enacted, using the language of Chief Justice Fuller, 'simply to remove an impediment to the enforcement of the State laws in respect to imported packages in the original condition created by the absence of a specific utterance on the part of Congress.'"

That is the end of the quotation. Then the report goes on to say:

"In other words, this act is in pursuance of the power of Congress to regulate interstate commerce and was held not to be a delegation of this power to the States, but the exercise by Congress of a power confided to Congress. It is not disputed that Congress can not delegate such a power for any purpose whatsoever, and it is equally well established that any act of Congress which invades the reserved province of the police power of the State under a mere pretext that interstate commerce is in some way affected is without constitutional authority and void."

I wanted that position of the committee and my position as well in regard to this legislation to be stated. I wanted the grounds upon which its constitutionality is rested to be correctly stated, and the extract that you have made from the speech attributed to me on the floor of the House did not state correctly or fully the grounds upon which the committee predicated the constitutionality of this legislation.

Mr. CRAIN. The bill gives the States something to which, under the Constitution, we maintain they are not entitled and to which, for the reasons to be set forth, they ought not to be entitled.

"It is also claimed that the only object of this amended bill is to correct the misinterpretation of the Supreme Court and to make the Wilson bill say what Congress intended it to say. An examination of the record does not bear this out. On the contrary, it is clear that all its advocates intended was to enable a State to cut out the right of sale in the original package and not to interfere with the right of shipment. The effort of the Prohibitionists of Iowa to read into this bill an authorization to interfere with a shipment in transit or before it arrived and was delivered to the consignee was clearly an afterthought. The discussion of the Wilson bill, as it appears in the Record of the first session of the Fifty-first Congress (p. 7427), shows that Congress intended it to mean just what the Supreme Court said it does mean.

"Our opposition to this measure rests on a number of grounds, which may be briefly summarized as follows: (1) There is no necessity for it."

Mr. DINWIDDIE. Mr. Chairman, I did not want to do this or did not expect to do it; but I shall be perfectly willing to have anybody from the other side correct me or to answer any questions which will throw light upon the matter. I wonder if Mr. Crain would permit me just a question, which I think will throw some light upon the statement he has just made. Have you any objection, Mr. Crain?

Mr. CRAIN. Not at all, if it is the pleasure of the committee.

Mr. DINWIDDIE. In regard to the statement about the State of Iowa attempting to read into this legislation something after the passage of the Wilson law, do you not know that it is a fact that the statute of Iowa that you refer to was enacted long after the Bowman and Leisy decisions were made and was never modified, and it simply was the legislation of Iowa for years and years past and gave rise to the original Bowman decision, and that then the Leisy decision—which was the original-package case—gave rise to the passage of the Wilson law?

Mr. CRAIN. I do not understand that to be the fact.

Mr. DINWIDDIE. Well, that is the fact just the same.

Mr. CRAIN. Mr. Dinwiddie, that does not change my statement at all. As a matter of argument, I proceed upon the theory that notwithstanding these local statutes of the State of Iowa, which were enacted as you say before the decisions in the Leisy v. Hardin case, the Bowman case, and these other cases, that when those statutes in Iowa were passed and the Leisy v. Hardin case came along and made a nullity of them because of the original-package idea, and when your friends had the Wilson bill enacted into law the one thing, in our judgment at least, that you had in mind was that when these goods became commingled with the masses of the goods in the States

and after they had reached their destination, then the local police regulations of those several States should apply. We take the position that it was not in the minds of our prohibition friends that they could seize these goods before they became commingled with the general mass of property in the several States.

We say that there is no necessity for this bill.

"The present law as interpreted already gives the States all the power they need or would in reality be able to exercise under this bill. (2) It is vicious legislation, likely to have an effect opposite to that intended. It is indirect and unfair, and aims to obtain by subterfuge and chicanery what Congress would never grant if openly asked for. (3) It is a gross interference with the rights of personal liberty. (4) It would involve serious financial loss and ruination to various important interests that have grown up under the protection of the Constitution and the law of the land. And (5) lastly and conclusively, it would be unconstitutional."

Mr. PALMER. Well, that is the proposition. Just demonstrate that, and you need not bother about the rest.

Mr. CRAIN. "The last of these objections will be considered first, in order that the legal aspects of the question may be properly emphasized, and it will be maintained that the bill, if it became a law, would be bad, (1) as a delegation of power to the States; (2) as enabling States to pass laws which would have an extraterritorial effect, and (3) as impairing various rights guaranteed to the citizens of the several States by the Constitution itself.

"It is apparent that this bill goes to the very root of the question as to the relative rights of the State and Federal governments in regard to interstate commerce and as to the delimitations that must mark the commercial power under the Federal Constitution and the police power under the State constitutions, and as this question is to-day looming large on the horizon in connection with much other proposed legislation, it deserves to be said that Congress can not afford simply to ignore the legal principles involved and leave it to the Supreme Court to determine questions of constitutionality vel non. The advocates of this bill argued at the last session of Congress, 'If it is unconstitutional, why oppose it? Why not let the Supreme Court say so?'

"Such argument should not have any force with this committee. As Chief Justice Marshall said in *Gibbons v. Ogden*: 'The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess, * * * are the real restraints upon which the people rely for protection from bad laws. 'They are the restraints on which the people must often rely solely in all representative government.' The duty of Congress is not to make work for the Supreme Court, but to pass constitutional laws. The constitutional question in a narrow as well as a broad sense, the question of your power under the Constitution and of the effect of this bill on the organic law, as well as the questions of advisability and expediency, are therefore properly before you.

"The constitutional question in a narrow legal sense is more difficult than it is in the sense of a broad statesmanship. The power to regulate interstate commerce has in these latter days come to be the most important power in the hands of Congress, and should be jeal-

ously guarded. To forecast the views of the Supreme Court on a bill of this character involves a study of many decisions, and carries one through a maze of perplexing judicial contradictions and non sequiturs; but recent decisions bearing on interstate commerce indicate that the court is fully alive to the importance of preserving to Congress that absolute and exclusive control over it to which it is legally, historically, and economically entitled.

"Our present form of government, it need hardly be recalled, owes its existence to the necessity that was felt by the original colonies for some control of commerce by a national body. The Articles of Confederation collapsed because of their failure to take this control away from the constituent members, and as early as 1778 we have New Jersey petitioning the Revolutionary Congress for a meeting 'to consider the regulation of commerce.' Mr. Witherspoon's famous resolution in the Continental Congress, in 1781, dwells on this, and a special committee of that body in 1785 emphasized the need of Congress possessing 'the sole and exclusive power' of regulating trade, not only with the Indians, as the articles provided, but with the several States and all foreign nations as well. The compact between Virginia and Maryland relative to the navigation of the Potomac River and the Chesapeake Bay, and the report of the committee thereon, led to the call by the Virginia legislature of the convention of Annapolis in 1786 'to take into consideration the trade of the United States, to examine the relative situation in the trade of the States, and to consider how far a uniform system in their commercial relations may be necessary to the common interests and their permanent harmony.'

"Out of this meeting grew the call signed by John Dickinson, chairman, for a constitutional convention 'having for its object the consideration of the trade and commerce of the United States,' and out of which grew our present Government. So that, as Daniel Webster said in his great brief in *Gibbons v. Ogden*: 'This Government owes its immediate origin to the necessity of regulating commerce between the States,' comparatively trifling as commerce then was. It is more and more the one tie that binds our statehood fabric, and this committee may well consider deeply before it passes any law which involves any fundamental departure from established ideas.

"To reach any intelligent conclusion as to the probable opinion of the Supreme Court on this bill, it is necessary to analyze the different views that at different times have possessed that august body. The first contentions that came before the court were as to what extent the States had surrendered to Congress all control over commerce between them. Had they concurrent power? Or was that of Congress exclusive? While Congress was silent could the States act? Could Congress authorize the States to act? Could the police powers of the States affect commerce? Has the Federal Government any police power, etc.?

"Down to 1849 the commerce clause had come before the Supreme Court in only five cases. Of these the leading one was *Gibbons v. Ogden* (9 Wheat., 1), and if the far-sighted and masterful reasoning of Chief Justice Marshall in his comprehensive opinion in that case had never been departed from, much confusion would have been

avoided. The case decided nothing more than that a State regulation of foreign or interstate commerce contrary to a law of Congress is void, but the opinion in its entire scope covers the present controversy. The contention between the famous opposing counsel was as to whether the control of interstate commerce was exclusively in Congress, or whether the States had concurrent power. The case having been decided on other grounds, this point was not passed upon; but the Chief Justice made it clear that he regarded it as being exclusive.

"The opinion in *Brown v. Maryland* (12 Wheat., 415), although deciding on other grounds, again confirms his opinion as to exclusive control. The *Black Bird Creek Marsh* case (12 Pet., 245), which is usually cited to show that Marshall changed his opinion and recognized a concurrent power in the States, is easily reconciled, and is probably more in line with the very last decisions of the court than any other. While *Black Bird Creek* was navigable, the right of the State to pass any law affecting the same, in the manner involved in the case, was clearly placed on the ground of a health measure. While in a measure it affected commerce, it did not regulate it. 'The repugnancy of the law of Delaware,' he says, 'to the Constitution is placed entirely on its repugnancy to the power to regulate. * * * a power which has not been so exercised (in this case) as to affect the question.' The Delaware law incidentally might under certain contingencies affect commerce within that State on that stream, but it did not regulate it or affect interstate 'intercourse' or trade.

"The next case which comes before the Supreme Court was the *Milne* case (11 Pet., 102), which is sometimes cited as recognizing a concurrent power in the States, although it decided nothing more than that, as a police measure, a State can pass certain quarantine regulations. Indeed, the dissenting opinion of Judge Story in this case ought to set at rest any question as to Marshall's view on the exclusive character of Congress's control over interstate commerce. Story went so far as to hold that the exclusive control of Congress was so absolute that 'a State can not make a regulation of commerce to enforce its health laws, because it is a means withdrawn from its authority;' and he adds: 'Such is a brief view of the grounds upon which my judgment is that the act of New York is unconstitutional and void. In this opinion I have the consolation to know that I had the entire concurrence upon the same grounds of that great constitutional jurist, the late Chief Justice Marshall.'"

Then we come, gentlemen, to the other days, following this thing along in a historical way.

"The reaction against the broad construction tendencies of those days, and of Marshall, Storey, and others in particular, probably explains the change of view that appears in Taney's day in the *License* cases, which next came before the court. Three cases went up in one record, the one interesting us most being the *Pierce* case (5 How., 504). New Hampshire required anyone who wished to sell liquor to obtain a town license. Pierce imported from Massachusetts a barrel of gin and sold it in the original package without a license, and was convicted therefor. He claimed that a State law requiring a license for the sale of imported liquor in the original package was void as a regulation of interstate commerce. Taney, C. J., upheld the law on the ground that Congress having passed no law regulating the sale of

liquors from other States, this law did not conflict and that the power of the States over commerce in such a case was concurrent. From the 'silence' of Congress this deduction was made. In later decisions we shall see that exactly the opposite meaning was given to Congressional silence."

Then we go on to discuss the *Pierce* case, following it along with *Cooley v. Port Wardens*, and come to the latter part of that decision. We find that when the justice was explaining the ruling of Chief Justice Marshall, he said:

"Now, the power to regulate commerce embraces a vast field containing not only many but exceedingly various subjects quite unlike in their nature, some imperatively demanding a single uniform rule operating equally on the commerce of the United States in every port, and some, like the subject now in question, as imperatively demanding that diversity which alone can meet the local necessities of navigation," etc.

Then the decision goes on to distinguish between the nature of this power and the nature of the subject to which it extends. I do not care to read the whole of that.

(At this point the committee took a recess until 2 o'clock p. m.)

ARGUMENT OF ROBERT CRAIN, ESQ., OF BALTIMORE, MD.

MR. CRAIN. Mr. Chairman and gentlemen, as general counsel for the United States Brewers' Association I desire, with your permission, to present as briefly as possible some of the reasons why the so-called Hepburn bill should not become a law. In the short time at my disposal I can merely suggest some of them.

From an economic and temperance standpoint I think this bill is thoroughly vicious, but I desire more particularly to discuss it from a legal standpoint. Speaking as a lawyer, after careful study of the question, it is my opinion that the bill, if passed, will be held unconstitutional for a number of reasons.

This same bill in the last session of Congress was introduced, reported favorably, and passed the House before its opponents knew that such a bill was even pending. As soon as the bill was brought to their attention a hearing was requested before the Senate Committee on Interstate Commerce, and after full argument that honorable committee rejected the measure, and it died.

Before this bill can become a law the commerce clause of the Constitution of the United States must be absolutely sacrificed and disregarded; the famous opinions of John Marshall in *Gibbons v. Ogden* and in *Brown v. Maryland* must be repudiated; the police powers of the several States must be given extraterritorial effect, and the regulation of commerce, which in the plainest Anglo-Saxon language was delegated by the Constitution to the Congress of the United States exclusively, must be transferred in this special instance to the several States.

I have not the time to go into this as thoroughly as I should like, but, briefly speaking, as you know, this bill is introduced to overcome the legal effects of a decision of the Supreme Court of the United States growing out of the so-called Wilson bill, passed August 8, 1890.

The Wilson bill was also passed at the request of the friends of prohibition, to overcome the legal effects of a decision of the Supreme Court. It is worth while to examine these decisions.

In *Leisy v. Hardin* (135 U. S., 100), "the original-package case," the Supreme Court held that no State had the power to control or prohibit the sale of intoxicating liquors transported from one State into another, so long as it remained in original packages.

The language of Chief Justice Fuller in this case has an important bearing on the question of the constitutionality of this proposed bill. "The power vested in Congress," he says, "to regulate commerce with foreign nations and among the several States and with the Indian tribes is the power to prescribe the rule by which that commerce is to be governed, and is a power complete in itself, acknowledging no limitations other than those prescribed in the Constitution. It is co-extensive with the subject on which it acts, and can not be stopped at the external boundary of a State, but must enter its interior and must be capable of authorizing the disposition of those articles which it introduces, so that they may become mingled with the common mass of property within the territory entered."

Further on he says: "These decisions rest upon the undoubted right of the States of the Union to control their purely internal affairs, in doing which they exercise powers not surrendered to the National Government; but whenever the law of the State amounts essentially to a regulation of commerce with foreign nations or among the States, as it does when it inhibits, directly or indirectly, the receipt of an imported commodity, or its disposition before it has ceased to become an article of trade between one State and another, or another country and this, it comes in conflict with a power which in this particular has been exclusively vested in the General Government, and is therefore void." Immediately following this decision, in order to overcome its effects, the Wilson bill was introduced and became a law on August 8, 1890.

On May 25, 1891, the Supreme Court for the first time construed this Wilson bill in the case of *Wilkerson v. Rahrer* (140 U. S., 572) on the case as presented, that intoxicating liquors transported into the State of Kansas and there sold, after the passage of this act, were subject to the existing laws of that State as to the selling of such liquors.

After this came the case of *Scott v. Donald* (165 U. S., 58), decided January 18, 1897, which construed the South Carolina dispensary law of January 2, 1895, and held it to be unconstitutional and void as a hindrance to interstate commerce; and held, further, that the dispensary law was not within the scope and operation of the Wilson Act.

When this Wilson bill again came before the Supreme Court of the United States, in the case of *Rhodes v. Iowa* (170 U. S., 415), the court rather dodged the question of its constitutionality, and, in an exhaustive opinion defining its scope and meaning, held that under its provisions liquors transported from one State to another remain under the protection of the interstate-commerce law until they are delivered to the consignee, and that the State law is inoperative to reach them until they are delivered by the common carrier to the person to whom they are consigned.

The present Hepburn bill is designed to overcome this just and equitable interpretation of the Supreme Court, by providing that State liquor laws shall become operative upon a shipment of liquor

immediately upon its "arrival within the boundary of such State or Territory before and after delivery," the addition of the last four words being the only amendment of the existing law. In other words, the mere physical arrival of the liquor on the boundary of any State, even though it be intended for private use, shall make it subject to the operation of State laws, and shall enable any State to empower its officials to confiscate it or destroy it or do as they please with it regardless of the purposes for which it is intended or of the rights of any individual or of the consignor or consignee.

If the Wilson bill had contained the provision of the proposed Hepburn bill—that the police power of the States should attach to articles of commerce before delivery—the Supreme Court would of necessity, in the Rhodes case, have held the Wilson bill to be unconstitutional, for the plain reason that the whole theory of that decision rests upon the basic principles involved in the subject under discussion, and which we now say are settled law, to wit: That the power of Congress over interstate commerce is complete; that spirits and malt liquor are legitimate subjects of interstate commerce; that interstate commerce begins with the shipment and ends with the arrival of the article in the hands of the consignee, and until such arrival interstate commerce continues; and as long as interstate commerce continues, the police powers of the State can not attach, and such police power of the State can attach to interstate-commerce shipments only when the shipment has reached the consignee.

When the shipment reaches the border line of the State, and is yet to be delivered, the goods are still in transitu, are subjects of interstate commerce, and under control of the interstate-commerce clause of the Constitution. If the police power could seize or lay hands on such goods at the border line the police power would be given extra-territorial jurisdiction; would supersede interstate commerce in its control of the shipment, and would destroy the rights of the citizens of the several States to ship articles of commerce and have them delivered to the purchaser in another State.

MR. PEARRE. Do you say that the Rhodes case so decides, or do you so contend?

MR. CRAIN. I mean to say that the Rhodes case preserves the commerce clause of the Constitution inviolate, and that it either says or justifies the conclusions and principles of law I have just stated. You can't, under the law, touch an interstate shipment until it reaches the hands of the consignee.

MR. PEARRE. You contend that Congress has not the power to remedy that?

MR. CRAIN. I contend that Congress has not the power to change the constitutional law of the land. I contend that the Supreme Court held in the Rhodes case that "arrival" meant, not arrival in the State, as the Wilson act says, but delivery to consignee, because the court did not believe that Congress had the power to do what our prohibition friends want you to do, and what they thought they had done when they got you to pass the Wilson bill.

I may say that this measure in the last Congress, as well as in this, has had some support because its real character was not understood. You have heard a great deal from our very estimable prohibition friends about the abuses and evasions under the existing law, and like the advocates of the bill before the last House, they argue that

this bill merely enables the State to suppress these abuses, and that it in no wise interferes with the right of any individual to import for his own use any liquor he desired. If this were so, the brewers of the United States would not oppose this bill, for they are not defending or asking protection for any such abuses or evasions; but unfortunately it is not so, as the prohibitionists who conceived and foster this bill well know. It has had support because at first blush the bill looks, as its champion in the last Congress argued, like "a proposition simply to give to the States the right of local self-government; the right of a majority in any community to make their own laws and to enforce them." But it does very much more than this.

Its own chief advocate on the floor of the last House said, "this is a proposition to surrender back to the States certain control which was given by the Federal Constitution under the commerce clause to Congress." He certainly stated the fact, even if he did thereby admit the utter unconstitutionality of the act. But it is even much more than this. It does for a State by indirection what the State itself can not do.

The error of such contentions as to the power of Congress is clearly established by the decision of the Supreme Court in the Rhodes case and in the *Vance v. Vandercook* case, to which I shall refer presently, and by what is apparently undisputed law from an examination of the authorities.

Thus Justice White, in delivering the opinion in the Rhodes case, cites the following from the Bowman case (125 U. S., 465):

It might be very convenient and useful in the execution of the policy of prohibition within the State to extend the powers of the State beyond its territorial limits. But such extraterritorial powers can not be assumed upon such an implication. On the contrary, the nature of the case contradicts their existence. For if they belong to one State they belong to all, and can not be exercised severally and independently.

It is enough to say that the power to regulate or forbid the sale of a commodity, after it has been brought into the State, does not carry with it the right and power to prevent its introduction, by transportation, from another State.

The court further says:

It is not gainsaid that the effect of the act of Congress was to deprive the receiver of goods shipped from another State of all power to sell the same in the State of Iowa in violation of its laws, but while it is thus conceded that the act of Congress has allowed the Iowa law to attach to the property when brought into the State before sale, when it otherwise would not have done so until after sale, on the other hand it is contended that the act of Congress in no way provides that the laws of Iowa should apply before the consummation, by delivery, of the interstate-commerce transaction.

To otherwise construe the act of Congress, it is claimed, would cause it to give to the statutes of Iowa extraterritorial operation, and would render the act of Congress repugnant to the Constitution of the United States. It has been settled that the effect of the act of Congress is to allow the statutes of the several States to operate upon packages of imported liquor before sale. (*Re Rahrer, Wilkerson v. Rahrer*, 140 U. S., 545 (35:572).)

The decision then goes on with great refinement of reasoning to analyze what the words "arrival in a State" mean, and goes on to show that if it meant at the State borders, it would nullify the whole act; but to uphold the meaning of the word "arrival," which is necessary to support the State law as construed below, forces the conclusion that the act of Congress in question authorized State laws to forbid the bringing into the State at all. This follows from the fact

that its arrival means crossing the line, then the act of crossing into the State would be a violation of the State law, and hence necessarily the operation of the law is to forbid crossing the line and to compel remaining beyond the same. Thus, if the construction of the word "arrival" be that which is claimed for it, it must be held that the State statute attached and operated beyond the State line confessedly before the time when it was intended by the act of Congress it should take effect.

But the subtle signification of words and the niceties of verbal distinction furnish no safe guide for construing the act of Congress. On the contrary, it should be interpreted and enforced by the light of the fundamental rule of carrying out its purpose and object, of affording the remedy which it was intended to create, and of defeating the wrong which it was its purpose to frustrate.

Undoubtedly the purpose of the act was to enable the laws of the several States to control the character of merchandise therein enumerated at an earlier date than would have been otherwise the case, but it is equally unquestionable that the act of Congress manifests no purpose to confer upon the States the power to give their statutes an extraterritorial operation so as to subject persons and property beyond their borders to the restraints of their laws.

If the act of Congress be construed as reaching the contract for interstate shipment made in another State, the necessary effect must be to give to the laws of the several States extraterritorial operation, for, as held in the Bowman case, the inevitable consequence of allowing a State law to forbid interstate shipments of merchandise would be to destroy the right to contract beyond the limits of the State for such shipments. If the construction claimed be upheld, it would be in the power of each State to compel every interstate-commerce train to stop before crossing its borders and discharge its freight, lest by crossing the line it might carry within the State merchandise of the character named covered by the inhibitions of a State statute.

The court further says:

Has the law of Iowa any extraterritorial force which does not belong to the law of the State of Illinois? If the law of Iowa forbids the delivery and the law of Illinois requires the transportation, which of the two shall prevail? How can the former make void the latter? In view of this necessary operation of the law of Iowa, if it be valid, the language of this court in the case of *Hall v. De Cuir*, 95 U. S., 485, 488 (24:547, 548), is exactly in point. It was said there: "But we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce or to interfere directly with its freedom does encroach upon the exclusive power of Congress. The statute now under consideration, in our opinion, occupies that position."

Now, this Hepburn bill is introduced to get around this decision. I have cited this case very fully, because, unless the Supreme Court reverses itself or completely shuts its eyes to the real nature of this bill, and the inevitable practical result that it will interfere with interstate commerce, it can not possibly hold it to be constitutional. To do so—

Mr. THOMAS. Before you leave that point that you were on, I would like to ask you a question if it does not interrupt you.

Mr. CRAIN. With a great deal of pleasure.

Mr. THOMAS. Is it your contention that Congress has no constitutional power to prohibit the transportation of intoxicating liquors from one State into another?

Mr. CRAIN. I have not said so, because that question is not germane to the issue. The Supreme Court—

Mr. THOMAS. I ask whether that is your contention?

Mr. CRAIN. No; I am not making that contention now. But I am contending that even if Congress can interfere with interstate commerce in liquor (which I by no means admit), it can not, as this bill

does, delegate to the States the power to do so. I say that the Supreme Court said, in the case of *Rhodes v. Iowa* and in *Vance v. Vandercook*, that the interstate commerce never ceased until the arrival of the goods, i. e., until they reached the hands of the consignee.

This bill proposes to allow the State to seize them before and after delivery. It proposes to stop commerce by preventing delivery. It proposes to enable any State to make prohibition effective by shutting off interstate commerce in liquor. For if the thirsty beer drinker can't get his glass of beer at home and can't import it, he is pretty effectually prohibited.

Mr. PEARRE. May I ask you a question?

Mr. CRAIN. Certainly.

Mr. PEARRE. I do not understand that this is a question of prohibition or antiprohibition.

Mr. CRAIN. In reality it is, but I am not now discussing it from such a standpoint.

Mr. PEARRE. I am especially interested in the legal features.

Mr. CRAIN. I am trying to give them to you.

Mr. PEARRE. Do I understand you to quote any decision of the Supreme Court of the United States to the effect that the pending bill is unconstitutional?

Mr. CRAIN. I say that if you read the case of *Rhodes v. Iowa* (170 U. S.)—my time is getting very limited, but if I had the time to read the whole case to you I would like to do so—that if you read that you will see that the one thought in the mind of Justice White, who wrote the opinion, was that the interstate commerce continued until the goods reached the hands of the consumer.

Mr. PEARRE. I understand that.

Mr. CRAIN. And he also said in that case, in exact words, that the shipment was interstate commerce until it reached the hands of the consignee. Now, if that is the case, and this bill says you can get hold of the goods before they reach the hands of the consignee, is the conclusion not inevitable that the act is unconstitutional?

Mr. PEARRE. Just there, did not the court say that the protection of the interstate-commerce clause of the Constitution continued until the article came into the hands of the consignee—I understand that—but did not the court say that that was so under existing circumstances because Congress had not acted, did it deny the power of Congress to thus affect interstate commerce in liquor?

Mr. CRAIN. The Supreme Court, Mr. Pearre, did not decide in reference to this bill, because this bill had not been introduced; but I say that the Supreme Court said that commerce continued until it got into the hands of the consignee, and you could not touch it.

Mr. PEARRE. Has not the court always indicated in its opinions that Congress had the power to go to the fullest extent that it will undertake to act in this bill if this committee reports it?

Mr. CRAIN. Absolutely not. The Supreme Court has gone the limit very often, but I believe they would stop at this bill. Let me show you why by calling your attention to the latest decision by the Supreme Court, in which the question under discussion was passed upon, which is the case of *Vance v. Vandercook Company*, decided May 9, 1898 (170 U. S., 438), at the same time the *Rhodes* case was decided. This case establishes the following points:

First. That "the respective States have plenary power to regulate the sale of intoxicating liquors within their borders, and the scope and extent of such regulations depend solely on the judgment of the law-making power of the States, provided always, they do not transcend the limits of State authority by invading rights which are secured by the Constitution of the United States, and provided further, that the regulations as adopted do not operate a discrimination against the rights of residents or citizens of other States of the Union."

Second. That "equally well established is the proposition that the right to send liquors from one State into another, and the act of sending the same, is interstate commerce, the regulation whereof has been committed by the Constitution of the United States to Congress, and hence that a State law which denies such a right, or substantially interferes or hampers the same, is in conflict with the Constitution of the United States."

Third. "That the interstate commerce clause of the Constitution guarantees the right to ship merchandise from one State into another, and protects it until the termination of the shipment by delivery at the place of consignment, and this right is wholly unaffected by the act of Congress which allows State authority to attach to the original package before sale, but only after delivery."

Fourth. That "the right of persons in one State to ship liquor into another State to a resident for his own use is derived from the Constitution of the United States and does not rest on the grant of the State law. Either the conditions attached by the State law unlawfully restrain the right or they do not. If they do—and we shall hereafter examine their contention—then they are void. If they do not, then there is no lawful ground of complaint on the subject."

Fifth. That "the right of the citizen of another State to avail himself of interstate commerce can not be held to be subject to the issuing of a certificate by an officer of the State of South Carolina, without admitting the power of that officer to control the exercise of the right. But the right arises from the Constitution of the United States; it exists wholly independent of the will of either the lawmaking or the executive power of the State; it takes its origin outside of the State of South Carolina and finds its support in the Constitution of the United States. Whether or not it may be exercised depends solely upon the will of the person making the shipment, and can not be in advance controlled or limited by the action of the State in any department of its government."

Now, gentlemen, that is the law. And until the Supreme Court reverses itself this bill can not be constitutional, unless it be true as claimed (1) that it does not in the least interfere with shipments from another State; or (2) that it does not empower any State to interfere with the right of anyone to import liquor for his own use. It assuredly does both these things.

If this act becomes a valid law, there can be absolutely no question that if a citizen of the State of Iowa orders a case of beer from the State of New York, the seller in New York could not ship that case of beer to the citizen of Iowa for the simple reason that immediately upon its arrival within the boundaries of the State of Iowa "before and after delivery" the police power of Iowa attaches and the tem-

perance inquisitors of that State can seize the package, and if the State law permits it, they can destroy it or sit in judgment on it as to whether it shall go to the consignee, or whether it is good for his health, his morals, or his hereafter.

So that, although no State can "forbid shipment to an individual resident for his own use," and although Congress itself also can not do this, yet by this specious legislation it accomplishes indirectly what it can not do directly. I do not believe the courts would uphold this. Congress can not delegate to any State the power not only to regulate commerce and destroy it, but also to regulate individual liberty and to destroy it.

Mr. HENRY. Why is this any more a delegation of power than the Wilson Act of 1890 was?

Mr. CRAIN. For the simple reason that the Wilson Act did not say that commerce had to be stopped. It said that commerce should continue, and commerce did continue until the goods got into the hands of the consignee.

Mr. HENRY. But the act did not say that, did it?

Mr. CRAIN. The Prohibitionists who had it passed did not think it said that, but the Supreme Court said that is what "arrival" meant.

Mr. HENRY. The act said that commerce could continue until the goods got into the hands of the consignee.

Mr. CRAIN. The act said—

Mr. HENRY. Did it not propose simply to give the States absolute freedom in dealing with interstate commerce?

Mr. CRAIN. That was the idea. The Wilson bill said that after the goods reached the State, arrived in the State, that the power of the State should attach.

The Supreme Court said "arrival in any State" meant arrival in the hands of the consignee, and that arrival in the hands of the consignee meant the continuation of the commerce from the time of the purchase and the shipment down to the time of the delivery.

Mr. HENRY. I do not want to interrupt you, but did they not say, in debate, that "arrival in the State" meant arrival in the boundaries of the State and not in the hands of the consignee?

Mr. CRAIN. In debate, very likely; I think so.

Mr. HENRY. Was not that the intention of the act?

Mr. CRAIN. Of the framers of the act, no doubt. If that was the intention, I wish they had clearly expressed it, for then there would never have been any Wilson bill. The Supreme Court would have knocked it into a cocked hat.

Marshall's opinion in *Gibbons v. Ogden*, that "commerce among States" means into and not merely to the boundary of States is still law in this country, I am glad to say. It was precisely because the court held "arrival" to mean delivery that the act was held constitutional; had they held it to mean what, as you rightly say, it was intended to mean, they would have held it to be unconstitutional. The court says so in so many words. Read those decisions and you will find out that from the beginning to the end the courts are not willing, are entirely unwilling, that Congress should give up its control over interstate commerce and delegate it to the States.

Mr. GILLET, of California. May I ask you a question?

Mr. CRAIN. With pleasure.

Mr. GILLETT, of California. The Constitution says that Congress has the power to regulate commerce?

Mr. CRAIN. Yes.

Mr. GILLETT, of California. Do you believe that Congress has the power to pass an act prohibiting interstate commerce on matters that are treated as subjects of legitimate commerce?

Mr. CRAIN. Not at all; and I am glad you ask that, for I want to refer to the recent opinion of Justice Harlan in the so-called Lottery case. (*Champion v. Ames*, 188 U. S., 321.)

At the last hearing before this committee counsel for the temperance people, with much bravado, proclaimed that since the Lottery case decision there could be no doubt of the constitutionality of a bill in Congress prohibiting any commerce in liquors. There is nothing in the opinion of the court warranting any such statement.

The whole intent of the act upheld by this opinion was the suppression of a nuisance and a fraud in interstate commerce traffic, which was being carried on through the transportation of lottery tickets through the means of interstate commerce. The opinion at page 501 cites the case of *Phalen v. Virginia* (8 How., 163), which held "that the suppression of nuisances injurious to the public health or morality is among the most important duties of government, and experience has shown that the common forms of gambling are comparatively innocuous when placed in contrast with the widespread pestilence of lotteries. The former are confined to a few persons and places, but the latter infests the whole community;" the justice further says that "in other cases we have adjudged that authority given by legislative enactment to carry on a lottery, although based upon a consideration in money, was not protected by the contract clause of the Constitution; this, for the reason that no State may bargain away its power to protect the public morals, nor excuse its failure to perform a public duty by saying that it had agreed, by legislative enactment, not to do so."

The court further says, at page 501:

As a State may, for the purpose of guarding the morals of its own people, forbid all sales of lottery tickets within its limits, so Congress, for the purpose of guarding the people of the United States against the "widespread pestilence of lotteries" and to protect the commerce which concerns all the States, may prohibit the carrying of lottery tickets from one State to another. In legislating upon the subject of the traffic in lottery tickets, as carried on through interstate commerce, Congress only supplemented the action of those States—perhaps all of them—which, for the protection of the public morals, prohibit the drawing of lotteries, as well as the sale or circulation of lottery tickets, within their respective limits. It said, in effect, that it would not permit the declared policy of the States, which sought to protect their people against the mischiefs of the lottery business, to be overthrown or disregarded by the agency of interstate commerce. We would hesitate long before adjudging that an evil of such appalling character, carried on through interstate commerce, can not be met and crushed by the only power competent to that end.

In concluding his opinion the justice said (p. 504):

The whole subject is too important, and the questions suggested by its consideration are too difficult of solution to justify any attempt to lay down a rule for determining in advance the validity of every statute that may be enacted under the commerce clause. We decide nothing more in the present case than that lottery tickets are subjects of traffic among those who choose to sell or buy them; that the carriage of such tickets by independent carriers from one State to another is therefore interstate commerce; that under its power to

regulate commerce among the several States Congress—subject to the limitations imposed by the Constitution upon the exercise of the powers granted—has plenary authority over such commerce, and may prohibit the carriage of such tickets from State to State; and that legislation to that end and of that character is not inconsistent with any limitation or restriction imposed upon the exercise of the powers granted to Congress.

No sane and decent person will suggest that it is necessary to stop the transportation of beer in order to “guard the morals of the people” or “to prevent widespread pestilence in lotteries,” yet these were the causes which induced the Supreme Court to render its decision in the lottery cases, and to say that under the power of Congress to regulate it had the right to stop the transportation of lottery tickets for the public good.

Before Congress can prohibit, directly or indirectly, the interstate traffic in beer, it must first be established that beer is not a legitimate article of commerce; and if I had the time I should like to quote you some of the adjudications on this point. Even the Supreme Court will not forget that the brewing industry is not on a par with traffic in lottery tickets; that it has been encouraged and fostered by colonial and Congressional legislation since the beginning of the country; that it has had the special commendation of the most eminent statesmen from Alexander Hamilton on down as a legitimate source of official revenue, and that it has contributed as much to the prosperity of the country and to the income of the nation as any other industry.

Mr. POWERS. You have referred to the case of Gibbons. Did not Marshall hold in that case that the right to regulate an article of interstate commerce carried with it the right to prohibit an article of interstate commerce?

Mr. CRAIN. No, sir; he did not go that far. Gibbons and Ogden, and Brown and Maryland, to the great credit of John Marshall, did not go that far, and, if he needed any monument, they would be a monument to his ability.

Mr. POWERS. Do you not find that he made this statement: That the prohibition of a single article of interstate commerce amounted to a regulation of interstate commerce as a whole?

Mr. CRAIN. I did not catch that.

Mr. POWERS. Do you not find that Marshall said in the Ogden case that the prohibition of a single article of commerce might amount to a regulation of interstate commerce?

Mr. CRAIN. That is undoubtedly so.

Mr. POWERS. Under that, may not interstate commerce be regulated by Congress by the prohibition of some one article?

Mr. CRAIN. Certainly not in the sense contended for by the prohibitionists. It might, to this length. If they said that this article that they were going to regulate was a fraud or a menace to public health or morals. I suppose Congress could say you could not carry smallpox patients from one State to another, or yellow-fever patients, or those kinds of things.

Mr. POWERS. Have you ever seen the various bills introduced in the last five or six years providing for the prohibition of interstate commerce in trust-made goods?

Mr. CRAIN. Yes.

Mr. POWERS. What do you think of those bills?

Mr. CRAIN. That is a large question. There is a difference between a regulation of the commerce and a prohibition of commerce. That is

the whole point. Just think of the shrewdness of our prohibition friends. Congress is asked to do something. Not to prohibit; oh, no; merely to regulate—to help the States regulate. That looks innocent enough. Pass the law—

Mr. POWERS. I want your views. I am not expressing my opinion. But would you say a bill, passed by Congress which prohibits interstate commerce in sending goods manufactured by certain corporations, known as the trusts, would be unconstitutional?

Mr. CRAIN. As the laws stand to-day, I would say yes. I would certainly say that Congress can not delegate to any State the power to say that such goods can not cross the State border, which is the case here. Even in the lottery cases the court had to have it argued twice, and then they were a divided court, and were months and months before they could get together on any kind of an opinion at all.

Mr. HENRY. One more question, if you please, although I do not want to interrupt you. I want to get the legal effect of this act. Suppose the act is passed?

Mr. CRAIN. The mere passage of this bill, of course, will not itself affect commerce, except in prohibition or local-option States, or in States having appropriate laws to take advantage of it, and the minute any State passes the necessary law, if it does not already have it, that minute the control of interstate traffic in liquor so far as that State is concerned passes to such State; and as different States will have different laws, one legal effect will be that chaos and inequality must prevail.

The control of interstate commerce was placed in Congress to prevent conflict and effect equality and uniformity. This bill at once destroys this. Rights guaranteed to a citizen of the United States and recognized by one State are denied by another. Interstate commerce in liquor will be lawful under certain restrictions or to a certain extent in one State and under different restrictions and to a different extent in another State. That uniformity and equality which the law of the land guarantees will be destroyed, and those rights, privileges, and immunities as to personal liberty and property guaranteed to the citizens of the United States by the Constitution will be at the mercy of the States.

If Congress can delegate to a State this power to regulate commerce by prohibiting it, of what use is the provision of the Federal Constitution as to interstate commerce? Does not Congress override the Constitution? Does not such action amount to a practical nullification of this provision of the Constitution, or at least an abdication of power under it?

Mr. HENRY. What effect would it have upon the importation of beer into local-option precincts in States where they have not State prohibitory laws?

Mr. CRAIN. If this bill were passed?

Mr. HENRY. Yes.

Mr. CRAIN. It would depend on the State laws, but it is not probable that you could get any beer in there unless our prohibition friends went to sleep or lost their muskets.

Mr. HENRY. I wanted to see how far-reaching it is.

Mr. CRAIN. That is it. Until you study it you do not grasp how tremendously far-reaching—

Mr. BRANTLEY. Let me ask you a legal question. Suppose this bill becomes a law; suppose it should be declared constitutional; what becomes of this interstate power over the commerce of liquor in those States that do not see proper to enact any legislation to carry out the provisions of this law? Does not Congress abdicate its power completely by this bill?

Mr. CRAIN. It surrenders all the power that Congress has in reference to this and it gives to the State the right to act. Of course, if a State does not act—if there is no prohibition or special legislation in the State—then the act has no effect.

Mr. BRANTLEY. Then what becomes of the power? Has not Congress parted with it?

Mr. CRAIN. It has parted with it and given it up, and that is what we say they can not do, and I challenge any lawyer in this country to read every decision from Gibbons and Ogden down to this case (188 U. S.—the Lottery case, the Ames case), and you will not find one single expression from all of the judges that have expressed opinions on this question showing that they even dreamed that Congress had a right to give up their power over interstate commerce and to delegate it to the several States.

Chief Justice Marshall, in *Gibbons v. Ogden*, said that “when a State proceeds to regulate commerce with foreign nations or among the several States it is exercising the very power that is granted to Congress, and is doing the very thing which Congress is authorized to do.” (Judson on Taxation, p. 103.)

Is not a sacred duty imposed upon Congress, in its control over interstate commerce, to safeguard the rights of the citizens of the several States in relation to interstate commerce, and not to be a party to any law scheme which seeks to destroy the individual right of any citizen of any State of the Union?

Mr. BRANTLEY. One more question. Suppose this bill passes and it is upheld as a constitutional law, would Congress then have left the power, if it ever had it, to pass a law prohibiting interstate commerce in liquor?

Mr. CRAIN. Congress might repeal the act.

Mr. BRANTLEY. I mean without repealing this act.

Mr. CRAIN. I doubt it.

Just a word more in regard to the insidious simplicity of this bill. As I said a moment ago, its chief fallacy is that it pretends one thing and does another. The measure in the last Congress as well as in this, has had some support, because its real character was not understood. At first blush it looks, as its champion in the last Congress argued, like “a proposition simply to give to the States the right of local self-government, the right of a majority in any community to make their own laws and to enforce them.” But this Hepburn bill does very much more than this. It delegates to the States a power denied them by the Constitution. It enables them to override those sacred rights and privileges guaranteed each citizen by the Constitution and the unwritten law of the land.

The laws of Iowa, let us say, make it unlawful to manufacture or sell beer. This law can not be enforced, say the advocates of this bill, because, forsooth, thirsty individuals import their beer from other States. Now, no State has yet had the temerity to violate the most fundamental principles of free government by making it a crime to

take a drink in the privacy of a man's own home, for "they shall sit every man under his vine and under his fig tree and none shall make them afraid, for the mouth of the Lord of Hosts hath spoken it." In other words, the wary Prohibitionist of Iowa or Kansas says: I have prohibited the manufacturing of beer; I can't prohibit anyone from drinking it, for that would be a violation of a right for which men have battled from the days of Runnymede to Spions Kop.

I can't prevent him from getting it as long as the Congress of the United States controls interstate commerce and permits him to import it consigned to himself, but if I can get the Hepburn bill passed I can seize the goods "before and after delivery," and then, inasmuch as he can't import it, and can't get it in his own State, there will be nothing left for him to do but quit drinking; and presto! Prohibition will prohibit. Surely, the mere statement of this proposition is its sufficient answer.

The very simplicity of the bill conceals its truly extraordinary and far-reaching character. Its passage would be the greatest invasion of the rights of the individual ever perpetrated by any American Congress; it would bring more discord and strife into the peace and harmony of the States, and stir up more bitterness and feeling among the people than any legislation since the fugitive-slave law; it would mean a loss of many millions to the brewing interests of the country; it would line the boundary of every temperance State with sneaks and smugglers; and, inasmuch as whisky can be more easily smuggled than beer, it would do the cause of temperance far more harm than good.

The beer drinkers and the enormous brewing industry of the United States do not believe that Congress is ready to pass any bill which either in purport or effect is a prohibition measure. While the temperance sentiment in this country may in recent years have increased, there can be no question that the prohibition sentiment has decreased. As a political issue prohibition is dead, and as a moral issue it has been abandoned even in the house of its friends. And this fact ought to be a source of much hope to the true lovers of temperance, for it means that if this great drink question is treated with fairness and intelligence instead of with bitterness and bigotry great good can be wrought. The beer industry is here to supply a human want, and it is here to stay. Its friends outnumber its enemies ten to one, and it is entitled to intelligent consideration and to a protection from a mistaken or fanatical minority.

Prohibition has failed because it is foreign to the genius of our free institutions and because it has lacked a sufficiently strong ethical basis to insure the necessary public approval and support. Prohibition does not prohibit; it demoralizes. And I say that in its legal and practical consequences this bill means prohibition by act of Congress wherever and whenever any State desires it. In his recent work on constitutional law Professor Tiedeman devotes a chapter to the constitutionality of prohibition laws, and says that in his opinion as a jurist the courts have not followed the law in upholding the various prohibition laws. I mention this merely to show that even in the courts the cause of prohibition is losing caste, just as it is with the public and even with the reformers.

As you know, the most complete and definitive study of the liquor problem ever made is that now being made by the so-called "Com-

mittee of Fifty," composed of men like President Eliot, Seth Low, Doctor Peabody, Carroll Wright, and others, and their various reports are an unanswerable indictment not only of prohibition, but of modern temperance methods. The best temperance thought of the day has abandoned prohibition as a way out of Egypt. Men like Bishop Potter, Bishop Magee, Bishop Hall, Doctor Rainsford, Lyman Abbott, and a host of other temperance reformers are outspoken enemies of the prohibition propaganda. Temperance is not an emotional nor even a merely moral question. It is an economic problem, calling for calm and intelligent study with some regard for the facts. The truth, as Professor Atwater puts it, is that "temperance reform has been supported by false arguments until its adherents feel that those arguments are almost inseparable from the cause itself. If the strongest weapon against a doctrine is the truth, it is time we revise the doctrine." Perhaps the best expression of the highest modern thought on the subject I can cite is that of Lyman Abbott, as set forth in a recent sermon; and I surely could not phrase a better argument against this bill.

"My objection," he says, "to prohibitory laws is not that they can not be enforced, but that they ought not to be enforced. * * * Not even the local community has a right to determine that men shall not drink alcohol. * * * Has a rural community in Maine, which thinks the saloon is an injury, a right to prohibit the saloon to the people of Bangor or Portland, who entertain a different opinion? If so, on what is that right based? * * * It must be based on the supposed right of the majority to impose their conscience on the minority, to determine for them what is safe and right, to act toward them in loco parentis; and this right of the majority to act in loco parentis toward the minority is fundamentally antagonistic to the essential principle of a democracy."

Aside from all legal objections, this committee will consider well the social and economic viciousness of such a law. There is no demand for such legislation and no real sentiment to sustain it. This kind of interference with individual liberty is foreign to the spirit of our laws and the genius of our civilization.

And this surely is true. The history of civilization, as I read it, sums itself up in the constant struggle of the individual toward greater personal freedom. Liberty has not merely been a shibboleth; it has, consciously or unconsciously, been the very life of the races in their onward struggle. "To pursue one's own good in one's own way," to quote Mr. Mill's famous phrase, means individual liberty; to permit a numerical majority or minority to define the "way" or determine the "good" is tyranny. Perhaps it is a trifle farfetched, but I can not help noting that the ideal of individual freedom has been strongest among the drinking races, and that humanity owes its best heritages to them. The Greek gave us literature and art; the Roman, law, and the hardest drinker of them all, the Teuton, gave us that passion for freedom which has made the Saxon the conqueror of the world. What have the three great races which rejected alcohol—the Arab and the Hindu and the Mongolian—done to equal the work of their drinking rivals?

No law could possibly be more fundamental or far-reaching or more antagonistic to the American ideal of individual rights than is

this bill. The doctrine of the police power has, it is true, been carried very far by judicial interpretation in this country, "but broad and comprehensive as is this power, it certainly can not extend to the individual tastes and habits of the citizen, which are confined entirely to himself." (License case, 5 How., 583.)

In former times sumptuary laws were sometimes passed * * * but the ideas which suggested such laws are now exploded utterly, and no one would seriously attempt to justify them in the present age. The right of every man to do what he will with his own, not interfering with the reciprocal rights of others, is accepted among the fundamentals of our law. (Cooley's Const. Limitations, 385.)

Finally, I wish to reiterate that in considering legislation of this character this committee should be guided by the truth, and not by the sentimental hopes or the bitter fanaticism of those who abhor drink as they abhor the devil. Or, to summarize the whole question in the words of the greatest living authority on the drink question, Mr. Gallus Thomann:

Lawmakers should bear in mind that the use of intoxicants is not a vice, but a perfectly proper enjoyment of great physical, intellectual, and moral benefit to the individual, and of inestimable ethical and material advantage to society; that the abuse of inebriating liquors is a vice, and that, while society is warranted in protecting itself against the effects of this abuse, the method of such protection should not in the least affect the liberty of action of the drinker, but should hold the drunkard responsible. * * * A very small minority drink excessively, and these, as a rule, are the least useful members of the community.

The effect of State interference like this is to deprive millions and tens of millions of useful men of their personal liberties and of that which enhances their well-being, and consequently the well-being of the community, in order to rescue from the throes of vice a small minority of weaklings, who, in the absence of drink, would as naturally succumb to any other one of the many vices and passions against which society finds ample protection in its penal laws. Such laws sacrifice the rights and well-being of the vast majority of moderate drinkers for an infinitesimally small minority of drunkards. * * *

I have no comment to make on many of the statements and representations that have been made during this hearing, but I can not refrain from referring you to high ecclesiastical opinion as to its general value, and I close by reading to you Bishop Potter's opinion of prohibitionists, published in the Outlook, March 11, 1899, as set forth in a letter to Lyman Abbott:

* * * It is the old situation—as old as the religion of Jesus Christ—with the Scribes and Pharisees on the one hand, the Sadduces on the other, and over and against them the Truth.

No more perfect reproduction of the first named has appeared in our day than the Prohibitionists; et id omne genus—arrogant, denunciatory, ignorant, unscrupulous, and untruthful; holding one meager fragment of truth to their eyes, and denying great and fundamental facts in human nature, in their futile and foolish endeavor to remedy the perversion of human instincts by extirpating them. The grotesque hypocrisy of the prohibition system, from Maine to Kansas, is a sufficient commentary upon their theories. Meantime the endeavors of wiser men and women to better the condition—the homes, the domestic life, the recreations—of their less-favored brethren go untouched of these, fit successors of those to whom Jesus said: "Woe unto you, Scribes and Pharisees, hypocrites, for ye bind heavy burdens upon men's shoulders, and grievous to be borne, and ye yourselves will not touch them with the tips of your fingers."

I thank the committee for their attention.

STATEMENT OF MR. ROBERT CRAIN, GENERAL COUNSEL OF THE UNITED STATES BREWERS' ASSOCIATION.

Mr. CRAIN. Mr. Chairman and gentlemen of the committee, it is difficult to add anything to the very full and learned argument which has been made by our friend, Judge Hough, and, as I have had the opportunity to print in the report of the hearings before the committee some of the reasons against the constitutionality of this bill, I will offer only a few suggestions to the committee at this hearing. I had the pleasure of listening to the able argument of Judge Smith, of Iowa, at the last hearing of the committee. In one part of the speech of Judge Smith, in answer to a question by Mr. Gillett, the judge took occasion to say:

You are talking about the constitutionality of this law. We will take care of ourselves if you have not any law that prevents our taking care of ourselves. We are not asking you to take care of us; we are asking you not to interfere with us.

If that is the position of our friends who are asking for the passage of this law, I should take it that the committee would have little difficulty in granting the request as made by Judge Smith. He makes the suggestion that if the committee, and afterwards Congress, will leave himself and his clients and his friends alone, that, at least in the State of Iowa, they will take care of the prohibition question. As I had understood the purpose of this bill, it was, in direct opposition to the statement as made by Judge Smith, that the people of Iowa, according to the views of our friends on the other side, having found it impossible to take care of themselves, had sought the intervention of Congress and asked the aid of Congress in taking care of their laws and the violations of their laws.

Now, gentlemen, it seems to me that it is unimportant in the discussion of this question whether or not the goods shipped from one of the States of the Union into a prohibition State be shipped there either for the purpose of consumption or for the purposes of sale. If the decision of the Supreme Court in the Rhodes case means anything, it means that commerce continues until the goods reach the hands of the purchaser, the consignee. After it has reached the hands of the purchaser it is then for the State law to take hold of those goods, and if those goods are to be sold in violation of any statute of the State, then that violation of statute is the thing that the State must look after. If the goods shipped from New York to Iowa to some man who would desire to purchase them for sale could be seized by the officials of the State of Iowa before they reached the hands of the man who had made the purchase, then the interstate commerce would be destroyed by the officer of the State of Iowa, because the officer of the State of Iowa would be taking hold of those goods while they were still in transitu, and under the decision of the Supreme Court it certainly would be in violation of the Constitution.

There seemed to be some doubt, at this first hearing of this committee, as to whether or not the power of Congress over interstate commerce was absolute; as to how far that power of Congress extended, and as to whether or not there could be some question as to the delegation by Congress to the several States of the regulation of the interstate shipment. We suggested from the very first, when this

bill was before the Senate committee, that there could be no question about that, because since the decision in *Gibbons v. Ogden* it had been acknowledged by all lawyers, as we saw the question, that the power of Congress over interstate commerce was an exclusive and an absolute power. When the opinion in the Northern Securities case was handed down, and you gentlemen of the committee I have no doubt have read it, Mr. Justice Harlan in delivering the opinion of the court, in discussing this question, said—

if, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States; that a sound construction of the Constitution allows to Congress a large discretion "with respect to the means by which the powers it confers are to be carried into execution, which enable that body to perform the high duties assigned to it in the manner most beneficial to the people."

Then he goes on to cite the case of *McCulloch v. Maryland*, and says:

The Government is for all; its powers are delegated by all; it represents all, and acts for all, and is supreme within its sphere of action.

Meaning that Congress had that right.

If we are to concede, and it seems to be settled law by all of the decisions of the Supreme Court, that an interstate shipment continues until it reaches the hands of the consignee, and if we are also to take as settled law that the States can not seize those goods until they reach the hands of the consignee, if you pass this bill and give to the several States the right to take hold of the goods before they get to the hands of the consignee, you delegate to the several States of the Union the power over interstate commerce, and from the decision of *Gibbons v. Ogden* down to this decision in the Northern Securities case, all the decisions are in unison to the effect that that can not be done.

If all other questions are brushed aside, if you brush aside the question which my brother, Judge Hough, has discussed so ably as to whether the sale is made in the State where the purchase is made or whether the sale is to be made in the State where the delivery is made, brushing all those questions aside, unless you are to override the decisions of the Supreme Court that the power of Congress is an absolute and exclusive power, that it can not be delegated, and that the several States can not take hold of these goods until they reach the hands of the consignee, you immediately place in the hands of the States the control over interstate commerce when these goods have reached the borders of the several States. Can any other construction be placed on this bill?

If you pass this bill its vitality, or efficiency, or force becomes effective only by virtue of some law existing or to be passed in the several States of this Union. The State of Iowa may have one law, the State of Kansas may have another law, and the State of Maryland another law, and so on through all the forty-odd States of this Union. Those States may have different laws. They may provide the machinery by which these goods are to be taken hold of when they reach the border line; but those goods when they reach the border line and before delivery are articles of interstate commerce, and any law

which says that the State may interfere with those articles of commerce is unconstitutional, because the Supreme Court has said so in the Rhodes case.

As I said at the last session of these hearings, in the few moments in which I addressed the committee, the only possible way in which the Congress could legislate against the traffic in alcoholic liquors is by the passage of an act of Congress in which the Congress would say that for the benefit of the entire people of this country and for the benefit of the people of the States the traffic in alcoholic liquors ought to be prohibited, and that the Congress would say with regard to liquors, as the Congress said in regard to lottery tickets—exactly as they said of lottery tickets—that for the good of the entire people they would prohibit the traffic in alcoholic liquors. This is not the bill that is pending here. The bill which is pending here is to give the several States the power to do this.

Now, Mr. Chairman and gentlemen, what has been the suggestion made by our friends? They have said that in Iowa—Judge Smith laid great emphasis upon that—there was no law upon the statute book which allowed the State of Iowa to take hold of these goods which were shipped there for purposes of consumption. Who was to pass upon the question as to whether the goods were for sale or whether the goods were for consumption before those goods had been delivered? If the State of Iowa had the right to appoint an officer, if the State of Iowa had the right to select some commissioner to go upon the border line and to take hold of those goods in the express car or at the station of one of the railroad companies, who was to decide as to whether those goods had been shipped to the consignee bona fide—for consumption or for purposes of sale?

That was giving to the State the power to say as to these interstate commerce shipments, whether they were for sale or whether they were for purposes of consumption. In this case of *Rhodes v. Iowa* the court made it perfectly plain as to the intention of the Supreme Court on the question of when the interstate commerce ceased, and wherein it commenced.

The sole question presented for consideration is whether the statute of the State of Iowa can be held to apply to the box in question while it was in transit from its point of shipment—Dallas, Ill.—to its delivery to the consignee at the point to which it was consigned: that is to say, whether the law of the State of Iowa can be made to apply to a shipment from the State of Illinois, before the arrival and delivery of the merchandise, without causing the Iowa law to be repugnant to the Constitution of the United States.

They they go on to cite the statute of the State of Iowa, and they come down to this question: Has the law of Iowa any extraterritorial force which does not belong to the State of Illinois? If the law of Iowa forbids the delivery and the law of Illinois requires the transportation, which of the two shall prevail? How can the former make void the latter? In view of this necessary operation of the law of Iowa, if it be valid, the language of the court in the case of *Vance v. Vandercook* is exactly in point. It was said there:

We think it might be safely said that State legislation which seeks to impose a direct burden upon interstate commerce or to interfere directly with its freedom does encroach upon the exclusive power of Congress.

What else can it mean? The language is "State legislation which seeks to impose a direct burden upon interstate commerce." Is it not

a burden upon interstate commerce to say that while that interstate commerce is going on, before the interstate commerce has ceased, some officer of any State in this Union can lay hands upon that interstate shipment and pass judgment upon the question as to whether or not that shipment is made in good faith to the purchasee for the purposes of sale or for the purposes of consumption?

Is the officer in the State of Iowa to pass judgment upon the question as to whether or not that shipment is made in good faith to the purchaser for the purposes of sale or for the purposes of consumption? Is the officer in the State of Iowa to pass judgment upon a sale which is made in the State of New York while that interstate-commerce shipment continues and before the interstate-commerce shipment ends; and is he to say—is the State to say—while the interstate-commerce is going on whether or not that shipment is made in good faith or whether it is made in bad faith, and what is to become of it?

The only argument offered for this bill is that it is necessary in order to give to the several States of this Union the right to regulate their own internal affairs in the question of liquors. That was the burden of the report which this honorable committee made at the last session of Congress. It was the statement which was made upon the floor of Congress by the advocates of this bill, in which they said: "Allow the several States of this Union to control their own internal affairs in the matter of the liquor traffic."

Now, whether or not those goods are sold to a man in a prohibition State for purposes of resale or for purposes of consumption matters not. It remains a fact that as soon as the goods reach their ultimate destination, then the State law attaches. Is Congress tying the hands of the several States? Is there anything in any act of Congress which takes away from the several States of this Union the right to control their own affairs in the liquor traffic? As soon as those goods get into the hands of the consignee, does not the State law take hold of them, and does not the State law treat those goods in exactly the same way as if those goods had been manufactured in a prohibition State? This is the whole question: The several States are asking Congress, you are told, to allow them to control, so far as the liquor traffic is concerned, their own internal affairs.

Is there any other point involved? And yet the Supreme Court said in the *Rhodes* and the *Vance v. Vandercook* cases that just as soon as those goods get into the hands of the man who has purchased them, then the State law applies and they are to be governed by the law of that State; but the temperance folk deny this.

You may read a temperance paper, you may read the *New Voice*, you may read all the arguments of our learned friends, and they begin with this proposition of enabling the States to control their own internal affairs, and they end with the same thought. If the Supreme Court has said anything it has said in the *Rhodes* case, and it has said in the *Vance v. Vandercook* case, that the laws of the several States are complete in the control over those goods just as soon as they reach the State, and they say that in reaching the State they must reach the hands of the consignee; and I submit that the States can ask for no more.

Mr. SMITH, of Kentucky. Can you answer this question? Why can not Congress say as to the liquor traffic that as soon as any of

these goods reach within the State, across the border of the State, they shall cease to be articles of interstate commerce?

Mr. CRAIN. Because the Constitution prohibits it, and the Supreme Court says so. That is the best reason I know of, on earth.

Mr. SMITH, of Kentucky. I understand.

Mr. CRAIN. Yes, sir; the Supreme Court says that the interstate commerce continues until the delivery reaches the hands of the consignee.

Mr. SMITH, of Kentucky. If Congress has power to regulate that, why can they not regulate it by saying that as soon as whisky or beer goes into one of these States it shall be eliminated from the list of articles subject to interstate commerce?

Mr. CRAIN. That might be so if the Supreme Court had not decided as it has. But the Supreme Court has decided that you can not say that the State may take hold of these goods before they reach the consignee. In other words, the Supreme Court has said that Congress has no right to relinquish or delegate its power over interstate commerce. The Supreme Court says, "You can not do that." It says you can not say "I will give up these goods when they get to the border line."

Mr. SMITH, of Kentucky. Has not Congress the power to say when the control of Congress shall cease?

Mr. CRAIN. Not at all. The Supreme Court has said where interstate commerce ceases and where it begins.

Mr. BRANTLEY. Can there be any such thing as interstate commerce unless the articles pass from one State to another?

Mr. CRAIN. Absolutely not.

Mr. BRANTLEY. Then if this be left to the State where it starts, there is no interstate commerce at all?

Mr. HENRY, of Texas. You and Judge Hough and the other attorneys who have argued this case speak of this law as delegating authority to the States. Now, Chief Justice Fuller, in deciding the Rahrer case, discussing the Wilson Act, uses this language:

Congress did not use terms of permission to the State to act, but simply removed an impediment in the enforcement of the State laws in respect to imported packages in their original condition, created by the absence of a specific utterance on its part. It imparted no power to the State not then possessed, but allowed imported property to fall at once upon arrival within the local jurisdiction.

Mr. CRAIN. That is exactly right; and I think that was just as sane a decision as could have been rendered. Here was the fiction: That because these goods were in an original package, that remaining in the original package they could be sold, and the State law could be superseded by reason of the fact that these packages, coming from some other State and being in original packages, they had some peculiar advantages.

Mr. SMITH, of Kentucky. They construed that to be a part of interstate commerce?

Mr. CRAIN. Yes; they said it was an incident of interstate commerce.

Mr. SMITH, of Kentucky. If they could cut off the right of sale—

Mr. CRAIN. They did not cut off the right of sale.

Mr. SMITH, of Kentucky. They said that Congress could.

Mr. CRAIN. Here is what they said: They said there was no rea-

son why these goods coming from some other State and being in the original package should stand on a different footing from goods manufactured in the State and not being in the original package. They took away that fiction which the original-package decision created. And they said to the State, We will not tie your hands because they are in the original package, but we will destroy that and wipe it out, and then when these goods get into the hands of the consignee you deal with them in the same way as though they were not goods that had been sent from the outside of the State at all.

Mr. HENRY, of Texas. You are not arguing that the Wilson law was unconstitutional?

Mr. CRAIN. No, sir; I never argue that the Supreme Court makes a mistake. Sometimes I may think so, but I never argue that way.

Mr. HENRY, of Texas. I have listened to all the arguments carefully, and I can not draw the distinction, really, between the Wilson law and this present law.

Mr. CRAIN. This law?

Mr. HENRY, of Texas. Yes, sir. This is more of a legislative construction of the Wilson Act of 1890—an interpretation of it—than it is new legislation.

Mr. CRAIN. That is very much better than I could have expressed it. That is asking Congress to say that the Supreme Court did not decide exactly as our prohibition friends would have liked the Supreme Court to decide, and they are asking you to instruct the Supreme Court to decide according to their liking.

Mr. HENRY, of Texas. Now, then, are they asking us to go any further than Congress went in 1890? That is a serious question in my mind.

Mr. CRAIN. Of course they are. They are asking you to delegate to the several States the authority to stop interstate commerce.

Mr. HENRY, of Texas. Why "delegate" any more in this case than in the act of 1890?

Mr. CRAIN. Because the Supreme Court said in that case that they could not, under the Wilson bill, get hold of or lay hands on the interstate-commerce shipments before the shipments reached the hands of the consignee. Now, our friends say, "we do not like that decision of the Supreme Court, and we want you to permit us to go out on the border line of the State, and as soon as a freight train or an express car comes along with these interstate shipments we want you to give to the State the power to take hold of these goods before they reach the men who purchased them.

Mr. HENRY, of Texas. That is it exactly.

Mr. CRAIN. Now, that is their—

Mr. HENRY, of Texas. That is their idea?

Mr. CRAIN. Yes. Now, you can not do that, because that is delegating to the several States the right to interfere with interstate commerce, and the Supreme Court said in the Rhodes case, and in the case of *Gibbons v. Ogden*, Chief Justice Marshall said, that the power over interstate commerce was an exclusive power existing in Congress; and they decided in the lottery case that Congress had a right to stop interstate commerce; that Congress had a right to destroy interstate commerce in articles which, in the judgment of Congress, were of such a character as to be destructive of the morals and the health and the good order of the community.

I made a proposition to this committee at the last hearing, which I repeat now, that if our friends will introduce a bill into Congress prohibiting—Congress prohibiting, now, not the State, but Congress prohibiting—traffic in alcoholic liquors, I do not think that this committee will again be worried by the presence of Judge Hough or myself. But that is not the proposition, that the Congress shall do this with interstate commerce, but that you shall go to the—

Mr. DE ARMOND. I do not understand that yourself and Judge Hough would be supporting the bill you refer to?

Mr. CRAIN. If we did, Congress would tell us we are wasting our time.

Congress stated with great boldness that interstate commerce must cease in lottery tickets. They did not have any "if" about that; and the Supreme Court said that lottery tickets were subjects of interstate commerce, and that the Congress had acted all right. Now, if our friends think that liquor and beer are such vicious and poisonous articles, why do they not have the courage to come and ask Congress to deal with them in an open and frank way? But they saw a loophole, they thought. They saw the stars twinkling in the heavens, so far as the Wilson bill was concerned; and by the silent light of the moon they went to work—if I may be permitted to say it—they went to work to hoodwink Congress.

Mr. HENRY, of Texas. You have frequently referred to the power of Congress over interstate commerce as being exclusive.

Mr. CRAIN. That is what these cases say.

Mr. HENRY, of Texas. There are a great many decisions holding that it is concurrent with that of the States.

Mr. CRAIN. I know, but this Northern Securities case says that it is an exclusive power, and it quotes the case of *Gibbons v. Ogden* to substantiate that.

Mr. HENRY, of Texas. That is mere obiter in this case so far as that opinion goes. There have been cases where they held that the power of the States was concurrent with that of Congress, and that wherever Congress by its silence did not act then the States might act.

Mr. CRAIN. And they have said in this case in the plainest language that it is an exclusive power, and Mr. Justice White—and his opinion is concurred in by the other three judges who dissented—gave the same opinion. So that we have the statement by the nine judges of the Supreme Court that the power of interstate commerce is an exclusive power in Congress. But I agree with you that for a long time after several of the cases, and perhaps for thirty years, that question was an open question, as to whether or not it was an exclusive power or whether it was shared by the State. But it is no longer, since these decisions, an open question, in my judgment.

The court said in the case of *Vance v. Vandercook*:

But the right of persons in one State to ship liquors into another State to a resident of that other State for his own use is derived from the Constitution of the United States and does not rest on the grant of the State law. Either the conditions attached by the State law unlawfully restrain the right or they do not. If they do—and we will hereafter examine this contention—they are void.

Mr. DINWIDDIE. Can I ask you a question?

Mr. CRAIN. Certainly.

Mr. DINWIDDIE. That is *Vance v. Vandercook*?

Mr. CRAIN. Yes, sir.

Mr. DINWIDDIE. What do you think would be the effect on the State of Iowa if this bill should pass and the Iowa law should remain?

Mr. CRAIN. My judgment is that there is no use in talking about that.

Mr. DINWIDDIE. We have been talking about it.

Mr. CRAIN. If the legislature of Iowa was not already in session, taking for granted that the sentiment that I hear here expressed about Kansas and Iowa is the true sentiment, the governor would immediately call the legislature together, and they would pass a law which would say that the officers of Iowa could go upon the border lines of the State and should become inspection officers, as to whether or not these goods were shipped for the purposes of consumption or whether they were shipped for the purposes of sale. And just think of the absurdity of that problem. Here are gentlemen who believe—taking them at their own word, and I never have any desire to question that—that the liquor traffic is an immoral thing; that it is hurtful to the health and good order and morals of society.

Mr. DINWIDDIE. That is what the Supreme Court says.

Mr. CRAIN. No, sir; the Supreme Court have never said so. Now, when a man has that belief, how long does it take him to stretch his conscience to suit the exigencies of the case? Suppose my learned friend here should have a friend of his own way of thinking in the State of Iowa—and I suppose there are a great many of them there—and suppose he should have some friend who is appointed to go upon the platforms of stations and into the express cars to determine as to whether or not these goods were shipped in good faith for the purposes of consumption or for the purposes of sale. I think we may reasonably assume that that man, acting according to his conscience, would say, "I am going to protect my neighbor, and I am going to see that his morals are not destroyed, and I will take care to say that these goods were shipped to that gentleman for the purposes of sale and not for the purposes of consumption."

And so it is exactly—I think I have said it before—like placing a poor, innocent pigeon or broiling chicken into the power or keeping of one of these chicken hawks, and you know what he would do with them. It is the same thing exactly.

With the State of Kansas—and we do not hear anything in this discussion but the State of Kansas and the State of Iowa——

Mr. DINWIDDIE. Oh, yes; there are many others.

Mr. CRAIN. I say that if you pass this law——

Mr. DE ARMOND. I do not quite catch one distinction. In the lottery case it is held that Congress has absolute power over this matter, and also in the Northern Securities case, in the original holding, that the sale in the first place was an incident.

Mr. CRAIN. Yes, sir.

Mr. DE ARMOND. Now, if it is held that Congress has the power to destroy in the one instance and the power to curtail the right of sale, why has not Congress the power to limit it on its entrance?

Mr. CRAIN. I have never suggested that Congress has not the power to decide whether these goods are for the purpose of sale or consumption. I say that the Supreme Court of the United States has decided in the lottery case, and it is now the settled law, that under the power to regulate Congress has the power to destroy; but it is to destroy

when, and to destroy what? To destroy interstate shipments when those shipments are against, are hurtful to the morals, the health, and good order of society. That is the only reason for the exercise of that power. I made the suggestion that if the Congress had the courage to say that so far as malted liquors were concerned they stood upon the same footing as lottery tickets, then a bill introduced into Congress which prohibited the transportation of malted liquors from one State to the other would be the best way to test the good faith of Congress as to the position which it occupied on account of these malted liquors, as to which they have been in partnership with the Government of the United States for the last sixty years.

MR. DE ARMOND. If Congress decides that these articles are detrimental to public health——

MR. CRAIN. And morals.

MR. DE ARMOND. And morals, and so on——

MR. CRAIN. Yes, sir.

MR. DE ARMOND (continuing). Why can they not say that they shall not be shipped into the State except on condition that they become subject to the State law?

MR. CRAIN. Because the Supreme Court has said it can not be. Because the Supreme Court has said that while Congress has absolute and full power over these interstate shipments, that power can not be delegated to the States of the Union.

MR. DE ARMOND. We do not delegate it. We say it shall terminate the interstate character when it reaches the State line.

MR. CRAIN. I know, but the Supreme Court said that it terminated when it took place; that the termination never took place until it reached the hands of the consignee.

MR. DE ARMOND. That was in the absence of Congressional legislation.

MR. CRAIN. I know; but the Wilson bill would have been knocked into 40 cocked hats by the Supreme Court if it had not been for the loophole which the Supreme Court took advantage of to get out of holding that bill unconstitutional.

MR. DE ARMOND. I confess that it is an intimation.

MR. CRAIN. It is an intimation. It is a certainty. The Supreme Court said, "We will not say that the Wilson bill is unconstitutional." Why? You say that the Wilson bill is unconstitutional because it interferes with interstate commerce. The Supreme Court said, "I do not agree with you. It does not interfere with the interstate commerce because the commerce does not cease until it reaches the hands of the consignee." That is what we argued. The Supreme Court said, "You are wrong. The interstate commerce does not cease until it reaches the hands of the consignee."

MR. DE ARMOND. In the original holding that the sale was a part of the interstate commerce——

MR. CRAIN. Yes.

MR. DE ARMOND (continuing). And the regulation of commerce, the cutting of that off, was conceded——

MR. CRAIN. Yes.

MR. DE ARMOND (continuing). If that was consistent, why can you not go another step?

MR. CRAIN. Congress said, "There is no reason why these original packages should give to the articles contained a specious value."

Mr. DE ARMOND. It was not an incident to the interstate commerce?

Mr. CRAIN. Why, of course not.

Mr. SMITH, of Kentucky. Did you state that the decision did not hold that the sale of interstate commerce was only an incident to it, and Congress in cutting off the sale did not cut off the incident?

Mr. CRAIN. It cut off the right of sale on the original package.

Mr. SMITH, of Kentucky. It only cut off the incident, and cut out no part of the rights attaching underneath the interstate-commerce law?

Mr. CRAIN. Now, what did the learned judge say in the case of *Vance v. Vandercook*? This is the way the court dealt with that. He said:

I am altogether unwilling to attribute to Congress an intention to abandon the protection of interstate commerce in articles of food or drink, whether for personal use or for sale.

The CHAIRMAN. That was in the dissenting opinion?

Mr. CRAIN. Yes, sir; that was in the dissenting opinion.

Mr. SMITH, of Kentucky. That language rather imports that Congress can abandon that if they want to?

Mr. CRAIN. I do not think so at all.

The CHAIRMAN. That was the point that the court differed on in that case.

Mr. HENRY, of Texas. This is a dissenting opinion.

Mr. SMITH, of Kentucky. I know it is. That language intimates that.

Mr. CRAIN. Gentlemen, I might extend these remarks, but as I told my friend, Mr. Dinwiddie, on the other side, that I would not exceed a certain time I will stop here.

**BRIEF FILED ON BEHALF OF THE BREWERS OF THE COUNTRY
BY ROBERT CRAIN, GENERAL COUNSEL OF THE UNITED
STATES BREWERS' ASSOCIATION.**

Hearing before the Committee on the Judiciary of the House of Representatives on the bill (H. R. 3159) entitled "A bill to limit the effect of the regulation of commerce between the several States and with foreign countries in certain cases." Fifty-ninth Congress, first session.

This brief is filed at the instance of the United States Brewers' Association on behalf of the brewers of this country, a body that is vitally interested in this measure, not only because of its immediate practical consequences, but because of the dangerous and revolutionary principle involved.

THE HEPBURN-DOLLIVER BILL.

WHAT IT IS.

This bill, popularly known as the Hepburn-Dolliver bill (S. 415, H. R. 3159), is an attempt to amend an existing law known as the Wilson bill, passed August 8, 1890 (26 Stat., 313, ch. 728), by adding ten words to it; but so far-reaching is the legal and practical import of this apparently trifling amendment that if it should

become a law and be upheld by the courts it will, in the judgment of many lawyers, have as far-reaching effect on the organic nature of our State and Federal government as any law placed on the statute books since the civil war. It has now been before Congress for several sessions, and its iniquities and supposed virtues have been pretty well thrashed out, but this brief synopsis of objections is filed in the hope that it may be of some service to the new members of the committee.

The present bill owes its existence to the following facts: Some years ago, when one of those reform waves that seem to move in cycles swept over the country, the reform microbe fastened itself on the so-called liquor curse, and a number of States passed prohibition laws, by virtue of which they undertook to prohibit all importations into the State of liquor from other States. The question of the constitutionality of one of the features of this State prohibitory legislation came up in the case of *Leisy v. Hardin* (135 U. S., 100), where it was held that spirituous liquors are recognized articles of commerce, and that under the interstate-commerce clause of the Constitution a citizen of a prohibition State has the right to import intoxicating liquors from another State, and has the right to sell it in original packages:

Whenever the law of the State amounts essentially to a regulation of commerce with foreign nations or among the States, as it does when it inhibits, directly or indirectly, the receipt of an imported commodity, or its disposition before it has ceased to become an article of trade between one State and another, or another country and this, it comes in conflict with a power which in this particular has been exclusively vested in the General Government, and is therefore void.

Immediately after this decision the Prohibitionists, following a somewhat illogical and contradictory intimation in this opinion, introduced into Congress, and had passed, the Wilson bill, which is the present bill practically verbatim, with the words "for delivery therein," "the boundary of," and "before and after delivery" left out—that is, it provides:

* * * That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory [for delivery therein.] or remaining therein for use, consumption, sale, or storage therein, shall, upon arrival within [the boundary of] such State or Territory [before and after delivery], be subject to the operation and effect of the laws of such State or Territory, enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

This act was sustained on May 25, 1891, by the Supreme Court in the case of *Wilkerson v. Rohrer* (140 U. S., 572) as a valid regulation of interstate commerce by Congress; but when the act again came before the court in *Rhodes v. Iowa* (170 U. S., 415) on a different question, it held that "arrival in the State" meant delivery into the hands of the consignee, and that therefore the power of the State could not attach to a shipment of intoxicating liquors from another State "whilst the merchandise was in transit under such shipment, and until its arrival at the point of destination and delivery there to the consignee."

The present bill is designed to overcome this just and equitable interpretation of the Supreme Court by providing that State liquor

laws shall become operative upon a shipment or liquor immediately upon its "arrival within the boundary of such State or Territory before and after delivery." In other words, the mere physical arrival of the liquor on the boundary of any State shall make it subject to the operation of State laws, and shall enable any State to empower its officials to confiscate it or destroy it or do as they please with it regardless of the purposes for which it is intended or of the rights of any individual or of the consignor or consignee.

WHAT THE BILL IS NOT.

Having stated what the bill is, it may be well to state what it is not. There is a sort of insidious simplicity and superficial fairness about it that has a tendency to mislead. Its advocates claim that it is "simply a proposition to give to the States the right of local self-government, the right of a majority in any community to make their own laws and enforce them."

In other words, this amended bill is simply a proposition to restore to the States in this matter full and ample power to enforce their police regulations against the sale of intoxicating liquors; that is the whole question. (Mr. Clayton, Congressional Record, January 27, 1903, p. 1390.)

Now, this is precisely what it does not do. It gives the States something to which under the Constitution, we maintain, they are not entitled and to which, for the reasons to be set forth, they ought not to be entitled.

It is also claimed that the only object of this amended bill is to correct the misinterpretation of the Supreme Court and to make the Wilson bill say what Congress intended it to say. An examination of the Record does not bear this out. On the contrary, it is clear that all its advocates intended was to enable a State to cut out the right of sale in the original package, and not to interfere with the right of shipment. The effort of the Prohibitionists of Iowa to read into this bill an authorization to interfere with a shipment in transit or before it arrived and was delivered to the consignee was clearly an afterthought. The discussion of the Wilson bill, as it appears in the Record of the first session of the Fifty-first Congress (p. 7427), shows that Congress intended it to mean just what the Supreme Court said it does mean.

ARGUMENT.

Our opposition to this measure rests on a number of grounds which may be briefly summarized as follows: (1) There is no necessity for it. The present law, as interpreted, already gives the States all the power they need, or would, in reality, be able to exercise under this bill. (2) It is vicious legislation, likely to have an effect opposite to that intended. It is indirect and unfair, and aims to obtain by subterfuge and chicanery what Congress would never grant if openly asked for. (3) It is a gross interference with the rights of personal liberty. (4) It would invoke serious financial loss and ruination to various important interests that have grown up under the protection of the Constitution and the law of the land. And (5), lastly and conclusively, it would be unconstitutional.

The last of these objections will be considered first in order that the legal aspects of the question may be properly emphasized; and it will be maintained that the bill, if it became a law, would be bad (1) as a delegation of power to the States, (2) as enabling States to pass laws which would have an extraterritorial effect, and (3) as impairing various rights guaranteed to the citizens of the several States by the Constitution itself.

It is apparent that this bill goes to the very root of the question as to the relative rights of the State and Federal Government in regard to interstate commerce and as to the delimitations that must mark the commercial power under the Federal Constitution, and the police power under the State constitutions; and as this question is to-day looming large on the horizon in connection with much other proposed legislation, it deserves to be said that Congress can not afford simply to ignore the legal principles involved and leave it to the Supreme Court to determine questions of constitutionality *vel non*. The advocates of this bill argued at the last session of Congress, "if it is unconstitutional, why oppose it? Why not let the Supreme Court say so?"

Such argument should not have any force with this committee. As Chief Justice Marshall said in *Gibbons v. Ogden*: "The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess * * *" are the real restraints upon which the people rely for protection from bad laws. "They are the restraints on which the people must often rely solely, in all representative government." The duty of Congress is not to make work for the Supreme Court, but to pass constitutional laws. The constitutional question in a narrow as well as a broad sense; the question of your power under the Constitution and of the effect of this bill on the organic law, as well as the questions of advisability and expediency, are therefore properly before you.

The constitutional question in a narrow legal sense is more difficult than it is in the sense of a broad statesmanship. The power to regulate interstate commerce has in these latter days come to be the most important power in the hands of Congress and should be jealously guarded. To forecast the views of the Supreme Court on a bill of this character involves a study of many decisions, and carries one through a maize of perplexing judicial contradictions and non sequiturs; but recent decisions bearing on interstate commerce indicate that the court is fully alive to the importance of preserving to Congress that absolute and exclusive control over it to which it is legally, historically, and economically entitled.

Our present form of government, it need hardly be recalled, owes its existence to the necessity that was felt by the original colonies for some control of commerce by a national body. The Articles of Confederation collapsed because of their failure to take this control away from the constituent members, and as early as 1778 we have New Jersey petitioning the Revolutionary Congress for a meeting "to consider the regulation of commerce." Mr. Witherspoon's famous resolution in the Continental Congress in 1781 dwells on this, and a special committee of that body in 1785 emphasized the need of Congress possessing "the sole and exclusive power" of regulating

trade, not only with the Indians, as the articles provided, but with the several States and all foreign nations as well. The compact between Virginia and Maryland relative to the navigation of the Potomac River and the Chesapeake Bay and the report of the committee thereon led to the call by the Virginia legislature of the convention at Annapolis in 1786 "to take into consideration the trade of the United States, to examine the relative situation in the trade of the States, and to consider how far a uniform system in their commercial relations may be necessary to the common interests and their permanent harmony."

Out of this meeting grew the call signed by John Dickinson, chairman, for a constitutional convention "having for its object the consideration of the trade and commerce of the United States," and out of which grew our present Government. So that, as Daniel Webster said in his great brief in *Gibbons v. Ogden*: "This Government owes its immediate origin to the necessity of regulating commerce between the States," comparatively trifling as commerce then was. It is more and more the one tie that binds our statehood fabric, and this committee may well consider deeply before it passes any law which involves any fundamental departure from established ideas.

To reach any intelligent conclusion as to the probable opinion of the Supreme Court on this bill, it is necessary to analyze the different views that at different times have possessed that august body. The first contentions that came before the court were as to what extent the States had surrendered to Congress all control over commerce between them. Had they concurrent power? Or was that of Congress exclusive? While Congress was silent could the States act? Could Congress authorize the States to act? Could the police powers of the State affect commerce? Has the Federal Government any police power, etc.?

Down to 1849 the commerce clause had come before the Supreme Court in only five cases. Of these the leading one was *Gibbons v. Ogden* (9 Wh., 1), and if the far-sighted and masterful reasoning of Chief Justice Marshall in his comprehensive opinion in that case had never been departed from, much confusion would have been avoided. The case decided nothing more than that a State regulation of foreign or interstate commerce contrary to a law of Congress is void, but the opinion in its entire scope covers the present controversy. The contention between the famous opposing counsel was as to whether the control of interstate commerce was exclusively in Congress or whether the States had concurrent power. The case having been decided on other grounds this point was not passed upon, but the Chief Justice made it clear that he regarded it as being exclusive.

The opinion in *Brown v. Maryland* (12 Wheat., 415), although deciding on other grounds, again confirms his opinion as to exclusive control. The *Blackbird Creek Marsh* case (12 Pet., 245), which is usually cited to show that Marshall changed his opinion and recognized a concurrent power in the States is easily reconciled, and is probably more in line with the very last decisions of the court than any other. While *Blackbird Creek* was navigable, the right of the State to pass any law affecting the same, in the manner involved in the case, was clearly placed on the ground of a health measure. While in a measure it affected commerce it did not regulate it. "The

repugnancy of the law of Delaware," he says, "to the Constitution is placed entirely on its repugnancy to the power to regulate, * * * a power which has not been so exercised [in this case] as to affect the question." The Delaware law incidentally might under certain contingencies affect commerce within that State on that stream, but it didn't regulate it or affect interstate "intercourse" or trade.

The next case which comes before the Supreme Court was the *Milne* case (11 Pet., 102), which is sometimes cited as recognizing a concurrent power in the States, although it decided nothing more than that as a police measure a State can pass certain quarantine regulations. Indeed, the dissenting opinion of Judge Story in this case ought to set at rest any question as to Marshall's view on the exclusive character of Congress's control over interstate commerce. Story went so far as to hold that the exclusive control of Congress was so absolute that "a State can not make a regulation of commerce to enforce its health laws, because it is a means withdrawn from its authority;" and he adds, "Such is a brief view of the grounds upon which my judgment is that the act of New York is unconstitutional and void. In this opinion I have the consolation to know that I had the entire concurrence, upon the same grounds, of that great constitutional jurist, the late Chief Justice Marshall." Story's conception of the "exclusive power of Congress," it will be observed, excluded the right of a State, even in the interest of health, to enforce any State law if it affected interstate commerce. This conception of "exclusive," with Marshall's indorsement, is worth remembering when you come to study the very recent decisions.

The reaction against the broad construction tendencies of those days, and of Marshall, Story, and others in particular, probably explains the change of view that appears in Taney's day in the license cases which next came before the court. Three cases went up in one record, the one interesting us most being the *Pierce* case (5 How., 504). New Hampshire required any one who wished to sell liquor to obtain a town license. *Pierce* imported from Massachusetts a barrel of gin and sold it in the original package without a license and was convicted therefor. He claimed that a State law requiring a license for the sale of imported liquor in the original package was void as a regulation of interstate commerce. Taney, C. J., upheld the law on the ground that Congress having passed no law regulating the sale of liquors from other States, this law did not conflict and that the power of the States over commerce in such a case was concurrent. From the "silence" of Congress this deduction was made; in later decisions we shall see that exactly the opposite meaning was given to Congressional silence.

The theory of the *Pierce* case seems to have possessed the Supreme Court in other cases (see *Passenger* cases, 7 How., 283), until, evidently realizing that it proved too much, it was given in *Cooley v. Port Wardens* (12 How., 299) (a case involving the constitutionality of local pilot regulations) a more limited scope, to the effect that the control of commerce under this clause of the Constitution was partly exclusive and partly concurrent. Such subjects of this power "as are in their nature national or admit only of a uniform system or plan of regulation" are under the exclusive control of Congress; and such as have not these universal attributes are concurrent; and

there is again an intimation of the doctrine that "the mere grant of such a power to Congress did not imply a prohibition on the States to exercise the same power; that it is not the mere existence of such a power, but its exercise by Congress which may be incompatible with the exercise of the same power by the States, and that the States may legislate in the absence of Congressional regulation." This dictum is cited because this view had its influence in the *Leisy* and *Bowman* cases, and because some very recent decisions absolutely expose its fallacy.

The case of *Cooley v. Port Wardens*, in which this doctrine appears as argument, really does nothing more in its decision than make a common-sense application of the Marshall interpretation of this clause, as is evident from the following language:

Now, the power to regulate commerce embraces a vast field, containing not only many, but exceedingly various subjects quite unlike in their nature; some imperatively demanding a single uniform rule, operating equally on the commerce of the United States in every port, and some, like the subject now in question, as imperatively demanding that diversity which alone can meet the local necessities of navigation; * * * the nature of * * * the regulation of pilots and pilotage * * * is local and not national; it is likely to be the best provided for, not by one system or plan of regulation, but by as many as the legislative discretion of the several States should deem applicable to the local peculiarities of the ports within their limits. * * * The nature of this subject is not such as to require exclusive legislation. * * * There is an absolute necessity from the nature of the subject for different systems of regulation drawn from local knowledge and experience, and conformed to local wants.

The decision then goes on to distinguish between the "nature of this power" and "the nature of the subject to which it extends," and refuses to—

affirm that the nature of the power is in any case something different from the nature of the subject to which, in such case, the power extends, and that the nature of the power necessarily demands, in all cases, exclusive legislation by Congress, while the nature of one of the subjects of that power not only does not require such exclusive legislation, but may be best provided for by many different systems evolved by the States in conformity with the circumstances of the ports within their limits.

It need hardly be added that pilot regulations which act only upon the instrumentalities of commerce—affect it, but do not regulate it—are not on a par with provisions of the character contained in this bill, which act on interstate shipments—on intercourse, trade, commerce.

The reasoning of the *Cooley* case appears to have appealed to the court in a number of subsequent cases, particularly the distinction as to the power being partly exclusive and partly concurrent, although the scope of this classification is steadily narrowed in the later cases; a fair example of which tendency is *Mobile v. Kimball* (102 U. S., 702).

For the regulation of commerce * * * there can be only one system of rules applicable alike to the whole country, and the authority which can act for the whole country can alone adopt such a system.

Now, it is obvious that this bill falls within that class of legislation which requires a uniform system. A State law accomplishing the same ends this bill aims at would not be upheld under the above theory as to the nature of this power for the palpable reason that

while as a law it applies to the whole country, as a "system of rules," as a "regulation" it would apply only as the different States might differently determine; and unless they all at the same time determined alike, it would bring about that very state of irregularity, uncertainty, discord, chaos, and oppression which the commerce clause is supposed to prevent. So that even if one were to concede a concurrent power in the States, this power does not fall within that class. This conclusion need not be dwelt on here, for it will be seen to follow logically from the further definitions of "concurrent" power laid down by subsequent decisions of the Supreme Court to be cited later.

Meanwhile, however, it may be well to note in passing the kind of State laws affecting interstate commerce which have been upheld and it will be noted that while they may affect interstate commerce they do not regulate it; they touch it only locally; they are not aimed at it; they are invariably laws which merely may affect it incidentally; or merely affect the objects or subjects or instrumentalities of commerce as distinguished from commerce itself in the sense of intercourse or trade. In other words, even under the theories of the Taney era, wherever a law was passed by any State for the purpose, or which had the effect, of regulating or deliberately reaching interstate commerce as commerce it has been held void.

This is the theory on which the various bridge, pilot, navigation, wharfage, maritime, ferry, license, tax, etc., cases have been distinguished.

Wilson v. McNames, 102 U. S., 572.

Gilman v. Philadelphia, 3 Wall., 713. *

Veazie v. Moor, 14 How., 568.

Cardwell v. Bridge Company, 113 U. S., 205.

Hamilton v. Vickstery, 119 U. S., 280.

Huse v. Glover, 119 U. S., 543.

Railway v. Renwick, 102 U. S., 180.

The General Smith, 4 Wh., 438.

Wiggins Ferry Company, 107 U. S., 365.

Woodruff v. Parham, 8 Wall., 123.

With the decisions in *Brown v. Houston*, 114 U. S., 681, and *Robbins v. Shelby Co. Taxing Dist.*, 120 U. S., 493, a variation on the dictum in the *Cooley* case referred to supra and another modification of the concurrent theory, seemed to spring up, to the effect that so long as Congress is silent and does not pass any law to regulate commerce among the several States, it thereby indicates its will, not that the States may act, but that commerce shall be absolutely free and untrammelled in all respects, but that if Congress so wished, or was willing, it might, by affirmative legislation, permit States to affect—not to regulate, but to affect—that freedom by passing laws affecting commerce. This theory appears to have possessed the judicial mind when Justice Matthew came to write the decision in *Bowman v. Chicago R. R.* (125 U. S., 460), and held a law of Iowa which interfered with an interstate shipment of liquor unconstitutional; and is, of course, the theory under which the advocates of the constitutionality of the present bill take shelter. Fortunately the recent decisions have ignored this judicial jugglery.

The decision in *Leisy v. Hardin* (135 U. S., 100), which was the

occasion of this bill, did nothing more than apply the law as laid down in the Bowman case. Chief Justice Fuller apparently interpreted the silence of Congress as indicating the "legislative will" that commerce must be free.

So long as Congress [he says] does not pass any law to regulate * * * or allowing the States to do so, it thereby indicates its will that such commerce shall be free and untrammelled * * * In the absence of Congressional power to do so, the State had no right to interfere by seizure or any other action in prohibition of the importation and sale by the foreign or nonresident importer * * *. The conclusion follows that as the grant of power to regulate commerce among the States so far as one system is required is exclusive, the State can not exercise that power without the assent of Congress.

These two decisions apparently involve a radical departure from the earlier decisions and all sorts of wild conclusions were drawn from them. Without adopting the theory that the States have a concurrent power to act within certain limits regardless of the silence of Congress, these cases seem to hold that Congress by breaking that silence can give the States such power; but they do not say that Congress can give the States any more extensive powers than the earlier decisions conceded them under the so-called "concurrent" theory, and those powers we have just seen were limited to laws which merely affected commerce incidentally. And it is important to keep this in mind because the more recent decisions get back to this safe ground; certainly they do not go as far as the logic of the Bowman and Leisy cases would carry them.

Immediately after the decision of *Leisy v. Hardin* the prohibitionists of Iowa took the suggestion contained in that opinion and had the Wilson bill passed. It seemed to do what the court said Congress might do; but let us see what the courts said and how they have effectually limited the meaning and scope of the Bowman and Leisy decisions.

The constitutionality of the Wilson bill first came up in the case *In re Rahrer* (140 U. S., 545). The bill was attacked on the ground that it delegated to the States the regulation of interstate commerce and if this decision had decided nothing else, it does establish this point, that Congress can not delegate this power. "It does not admit of argument that Congress can neither delegate its own powers nor enlarge those of a State."

It upheld the Wilson bill because it said in effect that it did not affect commerce nor did it give the States any power they did not already possess. In effect, it merely put the law where it was before the Leisy decision.

Congress did not use terms of permission to the State to act, but simply removed an impediment to the enforcement of the State laws in respect to imported packages in their original condition, created by the absence of a specific utterance on its part. It imparted no powers to the State not then possessed, but allowed imported property to fall at once upon arrival within the local jurisdiction.

If this act had given the State a power it did not already have, or had given the State authority to give its laws an extraterritorial effect, or if it had regulated commerce instead of merely affecting one of its objects or incidents, it is evident that the court would have held it bad. All it decides is that Congress has the power to divest

goods of their interstate character before sale within the State instead of after sale.

No reason is perceived why if Congress chooses to provide that certain designated subjects of interstate-commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competency to do so. (In re Rahrer.)

This decision also clears the way for subsequent rulings by some wise words on the old subject of "concurrent powers."

And here is the limit between the sovereign power of the State and the Federal power. That is to say, that which does not belong to commerce is within the jurisdiction of the police power of the State; and that which does belong to commerce is within the jurisdiction of the United States. (*Wilkinson v. Rahrer*, 140 U. S., 545.)

The Wilson bill again came before the court in *Rhodes v. Iowa* (170 U. S., 412), and the present bill owes its origin to the decision therein. In that case a shipment of intoxicating liquor had been made from another State into Iowa, and the agent of the ultimate railroad carrier in Iowa was proceeded against for an alleged violation of the Iowa law, because, when the merchandise reached its destination in Iowa, he had moved the package from the car in which it came to the freight office, there to await delivery to the consignee. "The contention was," says the summary of this case in the recent case of *American Express Company v. Iowa* (196 U. S., 145)—

That as by the Wilson Act the power of the State operated upon the property the moment it passed the State boundary line, therefore the State of Iowa had the right to forbid the transportation of the merchandise within the State and to punish those carrying it therein. The court declined to express an opinion as to the authority of Congress under its power to regulate commerce to delegate to the States the right to forbid the transportation of merchandise from one State to another.

It avoided this issue by laying down certain distinctions which are material in determining the constitutionality of this present bill. (1) They distinguish between transportation from consignor to consignee, which they say involves interstate commerce in its fundamental aspect, and the right to sell which they say is a mere incident; and (2) they lay down a more definite rule as to the absolute character of the Federal control of commerce.

Rhodes v. Iowa, 170 U. S., 424:

"While it is true that the right to sell free from State interference" interstate-commerce merchandise was held in *Leislly v. Hardin* to be an essential incident to interstate commerce, it was yet but an incident, as the contract of sale within a State in its nature was usually subject to the control of the legislative authority of the State.

On the other hand, the right to contract for the transportation of merchandise from one State into or across another involved interstate commerce in its fundamental aspect, and imported in its very essence a relation which necessarily must be governed by laws apart from the laws of the several States, since it embraced a contract which must come under the laws of more than one State. The purpose of Congress to submit the incidental power to sell to the dominion of State authority should not, without the clearest implication, be held to imply the purpose of subjecting to State laws a contract which in its very object and nature was not susceptible of such regulation even if the constitutional right to do so existed, as to which no opinion is expressed.

That this distinction was the fundamental determining point is made even clearer by the language of the court in a case decided at the same time and to which further reference will be made later.

Vance v. Vandercook, 170 U. S., 438:

It is also certain that the settled doctrine is that the power to ship merchandise from one State into another carries with it, as an incident, the right in the receiver of goods to sell them in the original packages, any State regulation to the contrary notwithstanding; that is to say, that the goods received by interstate commerce remain under the shelter of the interstate-commerce clause of the Constitution until by a sale in the original package they have been mingled with the general mass of property in the State. This last proposition, however, whilst generically treated, is no longer applicable to intoxicating liquors, since Congress, in the exercise of its lawful authority, has recognized the power of the several States to control the incidental right of sale in the original packages of intoxicating liquors shipped into one State from another, so as to enable the States to prevent the exercise by the receiver of the accessory right of selling intoxicating liquors in original packages, except in conformity to lawful State regulations.

In other words, by virtue of the act of Congress, the receiver of intoxicating liquors in one State sent from another can no longer assert a right to sell in defiance of the State law in the original packages, because Congress has recognized to the contrary. The act of Congress referred to, chapter 728, was approved August 8, 1890, and is entitled "An act to limit the effect of the regulations of commerce between the several States and with foreign countries in certain cases." The scope and effect of this act of Congress have been settled in *In re Rahrer* (140 U. S., 545) and *Rhodes v. Iowa* (ante, 412). In the first of these cases the constitutional power of Congress to pass the enactment in question was upheld, and the purpose of Congress in adopting it was declared to have been to allow State laws to operate on liquor shipments into one State from another, so as to prevent the sale in the original package in violation of State laws.

In the second case the same view was taken of the statute, and although it was decided that the power of the State did not attach to the intoxicating liquors when in course of transit and until receipt and delivery, it was yet reiterated that the obvious and plain meaning of the act of Congress was to allow the State laws to attach to intoxicating liquors received by interstate commerce shipments before sale in the original package, and therefore at such a time as to prevent such sale if made unlawful by the State law.

This distinction between importation and sale, or shipment and sale, is doubtless the point that saved the constitutionality of the Wilson bill. It was a reasonable way out of a difficulty, and the distinction was not a new one. In one of the License cases (*How.*, 504) Justice Woodbury made the same distinction:

It is manifest also, whether as an abstract proposition or practical measure, that a prohibition to import is one thing, while a prohibition to sell without license is another and entirely different. The first would operate upon foreign commerce on the voyage.

The latter affects only the internal business of the State after the foreign importation is completed and on shore. The subject of buying and selling within the State is one as exclusively belonging to the power of the State over its internal trade as that to regulate foreign commerce is with the General Government under the broadest construction of that power. The idea, too, that a prohibition to sell would be tantamount to a prohibition to import does not seem to me either logical or founded in fact, for even under a prohibition to sell a person could import, as he often does, for his own consumption and that of his family and plantation, and, also, a merchant extensively engaged in commerce often does import articles with no view of selling them here, but of storing them for a higher or more suitable market in another State or abroad.

Two results spring from the ground on which this decision is based: One, that the Wilson bill gives the Prohibitionists all they asked for, and that this present bill is not needed, as alleged, to rectify any defect in that bill; and another is that to have held otherwise or to uphold the changes involved in this new bill the courts would have to ignore or change completely the law of con-

tracts and of sales as now established under our system of jurisprudence.

The debates in Congress on the Wilson bill show that all that was asked was relief from the ruling in the *Leisy* case, to the effect that before interstate commerce ceases and State commerce begins property must not only be consigned and delivered, but if the package remains unbroken there must be one sale. This law as now interpreted, therefore, gives the States what they wanted and all they need. The ruling in the *Rhodes* case does not in the least restrict the operation of the law; it merely affirms what was beyond peradventure of doubt its legislative intent. If the Prohibitionists can not now prevent State traffic in liquor or sales thereof, it is not because Federal laws hamper them, but because that moral sanction and support which gives laws their force and vitality is lacking.

What the advocates of this bill and of some four or five other bills now pending really want is to change the common law of contracts and of sales. As Justice White says in *American Express Co. v. Iowa* (196 U. S., 145), the decisions in the *Bowman v. Chicago*, *Leisy v. Hardin*, *Rhodes v. Iowa*, and *Vance v. Vandercook*—

rest upon the broad principle of freedom of commerce between the States, and of the right of a citizen of one State to freely contract to receive merchandise from another State, and of the equal right of the citizen of a State to contract to send merchandise into other States. They rested also upon the obvious want of power of one State to destroy contracts concerning interstate commerce valid in the States where made.

Under the proposed bill articles of commerce lose their interstate character, if the States so determine, upon arrival at the boundary of a State and before and after delivery; and the distinction which Justice White says was the determining principle in those cases is here completely ignored.

Obviously, no sale of liquors could take place under such a law between the citizens of two States if either or both had, say, the present Iowa law. "A sale," says the Supreme Court in *N. & W. R. R. v. Sims* (191 U. S., 446)—

really consists of two separate and distinct elements. First, a contract of sale which is complete when the offer is made and accepted, and second, a delivery of the property which may precede, be accompanied by, or followed by the payment of the price as may have been agreed upon between the parties. The substance of the sale is the agreement to sell and its acceptance.

No contract could exist without delivery, and there could be no delivery. The law of Iowa, the home of the consignee, projects itself under this bill into the State of Illinois, the home of the consignor, and says, "You can contract to sell, but our State law deprives you of the right to deliver, of the right to stoppage in transitu after it gets to our boundary, and of the right to demand from the common carrier that he carry out his contract to deliver to the consignee." That is, Iowa deprives not only its citizen of these rights, but the citizen of another State, to whom the Constitution of the United States guarantees certain inalienable privileges, is also deprived of all these rights which the law of the land recognizes. What effective rights of contracting and shipping has the citizen of Illinois if Iowa can stop his shipment at its boundary?

It is clear that the Wilson bill was not upheld because of any theory of concurrent jurisdiction over interstate commerce in the States;

nor did the "silence of Congress" notion get any further indorsement. On the contrary, these cases settle the law once and for all that the power over interstate and foreign commerce is exclusively in Congress, and that no exception will be made, even of the police legislation of the States. "Police power can not be superior to commercial power." (In re Rahrer.)

State laws may affect commerce, as is shown, when the "incidental" right of sale is removed after delivery to consignee, but whenever a State law will in any wise interfere with commerce in the sense of intercourse, or in the sense of transportation from consignor to consignee, or in the sense of freedom of contract, or whenever a uniform rule or plan of regulation is required, then Congress alone can act.

The correctness of this view is confirmed by the last and most exhaustive examinations of the subject. *Lottery Cases*, 188 U. S., 362, and *Northern Securities Co. v. U. S.* (193 U. S., 197), the reasoning of which decisions frankly goes back to that of Marshall. "If, as has always been understood," says Justice Harlan, in the *Northern Securities Case*,

the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States; that a sound construction of the Constitution allows to Congress a large discretion with respect to the means by which the powers it confers are to be carried into execution, which enable that body to perform the high duties assigned to it in the manner most beneficial to the people.

Then he goes on to cite the case of *McCulloch v. Maryland*, and says:

The Government is for all; its powers are delegated by all; it represents all, and acts for all, and is supreme within its sphere of action.

Briefly, then, the Wilson bill was upheld purely because it merely affected one of the incidents of interstate commerce, to wit, the right of sale after delivery. The court expressly says that if the Wilson Act meant what its advocates contended it did mean (and what in common parlance it seems to mean)—that is, that "arrival in a State" means at the boundary—then it would operate extraterritorially. The court prevented its doing this by deciding that "arrival" in a State meant arrival in the hands of the consignee. The present bill says "arrival" shall mean "at the boundary," and "before and after delivery." It says the Wilson bill shall be declared by Congress to mean what the Supreme Court says it doesn't mean, and what the Congress that passed it didn't intend it to mean.

If the amended construction is to be placed on the Wilson bill, then it is clear that it would amount (1) to giving State laws an extraterritorial effect, (2) to a delegation of Federal power to the States, and (3) to depriving a citizen of the right to import liquor for his own use, and that these results follow and that they make the proposed bill unconstitutional is evident from the express words of the Supreme Court.

It might be very convenient and useful in the execution of the policy of prohibition within the State to extend the powers of the State beyond its territorial limits. But such extraterritorial powers can not be assumed upon such an implication. On the contrary, the nature of the case contradicts their exist-

ence. For if they belong to one State they belong to all, and can not be exercised severally and independently.

It is enough to say that the power to regulate or forbid the sale of a commodity after it has been brought into the State does not carry with it the right and power to prevent its introduction by transportation from another State.

* * * * *

It is not gainsaid that the effect of the act of Congress was to deprive the receiver of goods shipped from another State of all power to sell the same in the State of Iowa in violation of its laws, but while it is thus conceded that the act of Congress has allowed the Iowa law to attach to the property when brought into the State before sale, when it otherwise would not have done so until after sale, on the other hand it is contended that the act of Congress in no way provides that the laws of Iowa should apply before the consummation by delivery of the interstate commerce transaction.

To otherwise construe the act of Congress, it is claimed, would cause it to give to the statutes of Iowa extraterritorial operation, and would render the act of Congress repugnant to the Constitution of the United States. It has been settled that the effect of the act of Congress is to allow the statutes of the several States to operate upon packages of imported liquor before sale. (*Wilkinson v. Rohrer*, 140 U. S., 545.)

If the act of Congress be construed as reaching the contract for interstate shipment made in another State, the necessary effect must be to give to the laws of the several States extraterritorial operation, for, as held in the *Bowman* case, the inevitable consequence of allowing a State law to forbid interstate shipments of merchandise would be to destroy the right to contract beyond the limits of the State for such shipments. If the construction claimed be upheld it would be in the power of each State to compel every interstate commerce train to stop before crossing its borders and discharge its freight, lest by crossing the line it might carry within the State merchandise of the character named covered by the inhibitions of a State statute. (*Ibid.*)

The proposed bill certainly will enable States to pass laws having an extraterritorial effect, with the inevitable result that the very strife, discord, and irreconcilable conflict which led to the insertion of the commerce clause would again ensue. Has the law of Iowa any extraterritorial force which does not belong to the law of the State of Illinois? If the law of Iowa forbids the delivery and the law of Illinois requires the transportation, which of the two shall prevail? How can the former make void the latter? In view of this necessary operation of the law of Iowa, if it be valid, the language of this court in the case of *Hall v. De Cuir* (95 U. S., 485, 488) is exactly in point. It was there said: "But we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce or to interfere directly with its freedom does encroach upon the exclusive power of Congress. The statute now under consideration, in our opinion, occupies that position." (*Ib.*)

Not only would the present law be unconstitutional for its extraterritorial effect and because it extends the State police power beyond its constitutional limits, but it would clearly amount to a delegation of its powers by Congress to the States.

It does not admit of argument that Congress can neither delegate its own powers nor enlarge those of a State. (*Rohrer*, 140 U. S., 560.)

The rule is fundamental that the power to make laws can not be delegated. (*Ib.*)

One of the settled maxims in constitutional law is that the power conferred upon the legislature to make laws can not be delegated. (*Cooley Const. Law*, p. 117.)

It is true this bill on its face delegates no power; but this bill in itself *ex proprio vigore* does not affect commerce; it only takes effect where a State has or passes the necessary legislation supplementing

it. The minute any State passes the necessary law, if it does not already have it, that minute the control of interstate traffic in liquor so far as that State is concerned passes to such State; and as different States will have different laws, one legal effect will be that chaos and inequality must prevail.

The control of interstate commerce was placed in Congress to prevent conflict and effect equality and uniformity. This bill at once destroys this. Rights guaranteed to a citizen of the United States and recognized by one State are denied by another. Interstate commerce in liquor will be lawful under certain restrictions or to a certain extent in one State and under different restrictions and to a different extent in another State. That uniformity and equality which the law of the land guarantees will be destroyed, and those rights, privileges, and immunities as to personal liberty and property guaranteed to the citizens of the United States by the law of the land will be at the mercy of the States.

If Congress can delegate to a State this power to regulate commerce by prohibiting it, of what use is the provision of the Federal Constitution as to interstate commerce? Does not Congress override the Constitution? Does not such action amount to a practical nullification of this provision of the Constitution, or at least an abdication of power under it?

The Wilson bill was specifically held not to be a delegation of power, because it did none of those things; it merely removed one of the nonessential elements of interstate commerce, to wit, the right of sale free from State interference after delivery in the State. It took away this incident so that the police power could act; it didn't enlarge the police power so that it could reach interstate commerce or intercourse; it merely enabled it to reach or affect one of the subjects of commerce after the contract that constituted commerce had been completed.

It is true the court in the Rhodes case says it expresses no opinion on the right of Congress to delegate to the States this power. But in the light of the decisions can there be much question as to what its opinion on this subject would be?

But regardless of what the Supreme Court might say technically or juridically as to this right, has Congress the moral right to do this? The sovereign people of the sovereign States have placed in the hands of Congress the control of interstate commerce; they have a right to ask it not to abdicate nor delegate this power at the request of any one or more States. Iowa says she can not enforce her public laws against intoxicating liquors unless given the power to stop interstate shipment of liquor at her boundaries. If she asked authority from you to build a Chinese wall around her boundaries so that commerce with other States could be shut out, no one would hesitate as to its unconstitutionality. This law will build such a wall effectively as to liquor. It will stop interstate commerce in this commodity so far as she is concerned. Pass this bill and the liquor trade is at the mercy of the States. Iowa, under her State law, would seize goods at the boundary; Kansas, let us say by way of illustration, would require a certificate or a special package or special label or what not before it could enter; Maine might require drastic inspection; Vermont a special tax; every State a different law, with confusion worse confounded as a result to the interstate shipper. Or suppose every

State passed the present Iowa law; you would then have, as Justice White said, absolute national prohibition—prohibition by delegated act of Congress. This act does not regulate commerce; it delegates to the States the power to regulate and with it the power to destroy.

It is worth noting also that the fact that a State law is in itself valid, as an exercise of the police power does not place it in any more favorable position than any other law when the question arises as to whether it is in conflict with the power of Congress over commerce. Such a doctrine seems to have prevailed for a time (see opinions of Grier, J., and McLean, J., in License cases, 5 How., 588) on the principle of *salus populi suprema lex*. The advocates of this bill seem to have the same idea, that there must *ex necessitate* be something about the police power of a State which gives it the right to call upon Congress for assistance if its operations are affected by any silence on the part of that body.

Fortunately, this theory is thoroughly exploded by the recent decisions. The fact that a State law deals with health or the most unquestionable of police measures gives it no greater supremacy nor sanctity than any other law if it regulates or comes in conflict with interstate commerce.

Railroad v. Hosen, 95 U. S., 465.

Minn v. Barber, 136 U. S., 313.

Bowman v. Chicago (supra).

Leisy v. Hardin (supra).

Lottery cases (infra).

The proposed bill in terms subjects goods in any State "for use, consumption, or sale" to the operation of a State law. Under its practical workings it would, or at least could, therefore, effectively prevent importations for personal use. This alone would be a fatal defect. No State can prohibit the importation of liquor for personal use. The Rhodes case did not pass on that question, as there was no necessity to do so, but the case of *Vance v. Vandercook* (170 U. S., 438) does; and both cases, passed at the same term of court, taken together, settled this question. The rulings of the court in this case have also other important bearings on the questions here discussed. It held (1) that the proposition is well established—

That the right to send liquors from one State into another, and the act of sending the same, is interstate commerce, the regulation whereof has been committed by the Constitution of the United States to Congress, and hence that a State law which denies such a right, or substantially interferes or hampers the same, is in conflict with the Constitution of the United States.

(2) That the interstate-commerce clause of the Constitution guarantees the right to ship merchandise from one State into another, and protects it until the termination of the shipment by delivery at the place of consignment, and this right is wholly unaffected by the act of Congress which allows State authority to attach to the original package before sale, but only after delivery.

(3) [That] the right of persons in one State to ship liquor into another State to a resident for his own use is derived from the Constitution of the United States, and does not rest on the grant of the State law. Either the conditions attached by the State law unlawfully restrain the right or they do not. If they do—and we shall hereafter examine their contention—then they are void. If they do not, then there is no lawful ground of complaint on the subject.

(4) [That] the right of the citizen of another State to avail himself of interstate commerce can not be held to be subject to the issuing of a certificate by an officer of the State of South Carolina, without admitting the power of that officer to control the exercise of the right. But the right arises

from the Constitution of the United States; it exists wholly independent of the will of either the lawmaking or the executive power of the State. It takes its origin outside of the State of South Carolina and finds its support in the Constitution of the United States. Whether or not it may be exercised depends solely upon the will of the person making the shipment, and can not be in advance controlled or limited by the action of the State in any department of its government.

In short, if the dispensary law had not been so construed as to preserve the right to make interstate shipments for personal use—a right “derived from the Constitution of the United States”—it is clear the entire act would have been held unconstitutional.

Therefore it follows that this proposed bill must be unconstitutional if it enables any State either to interfere with interstate shipments or with the right to import liquor for personal use. It assuredly does both.

If this act becomes a valid law, there can be absolutely no question that if a citizen of the State of Iowa orders a case of beer from the State of New York the seller in New York could not ship that case of beer to the citizen of Iowa for the simple reason that immediately upon its arrival at the boundaries of the State of Iowa, “before and after delivery,” the police power of Iowa would attach, and the temperance inquisitors of that State could seize the package, and if the State law permitted it they could destroy it, or sit in judgment on it as to whether it should go to the consignee or whether it is good for his health, his morals, or his hereafter.

So that, although no State can “forbid shipment to an individual resident for his own use,” and although Congress itself also can not do this, yet by this specious legislation it accomplishes indirectly what it can not do directly.

As soon as the liquor reaches the consignee, whether for his own use or not, it is subject to the laws of the State. The police problem is then between the consumer and the State. That is where it ought to be. That is where the present law, as interpreted, puts it. And that is where it ought to stay. If a State can not enforce its own laws, if it can not legislate total abstinence into the hearts of its citizens, Congress ought not and can not help it by delegating superior power.

In the several hearings before the committees of the last Congress the question was repeatedly asked by members whether the opponents of this bill contended that Congress had not the constitutional power to prohibit the transportation of intoxicating liquors from one State to another.

So far as this proposed bill is involved, the precise issue raised by that question is purely academic, as our objection to this bill is that it delegates to the States the power to make such prohibition; that it is in fact and in purport nothing more than a prohibition measure in disguise. Indeed, the Supreme Court, in the Lottery cases (188 U. S., 362) so pronounced it, for it says, speaking of the Wilson bill, if under it “all the States had enacted liquor laws prohibiting the sale of intoxicating liquors within their respective limits, then the act would have had the necessary effect to exclude ardent spirits altogether from commerce among the States.”

A sufficient answer, therefore, to this question would be to say that if Congress wishes to try to prohibit interstate shipments of intoxi-

cating liquors it should say so frankly by an appropriate bill, and do it by a general regulation applicable to all the States, and not try to do it by delegating the power to the States. However, as a full answer to this question will expose the viciousness of this present bill it is worth considering.

In the first place Congress would not pass such a bill even if it has the power, and in the second place it does not have the power. Let us consider the latter proposition first.

This idea that Congress might prohibit interstate shipments of liquor received its impetus from the supposed sweeping character of Justice Harlan's opinion in the Lottery cases. Instead of reviewing at length rulings of the courts bearing on this question, it will be sufficient to confine ourselves to a study of this opinion. On close examination it does not go near so far as at first blush appears. One object in the first part of this brief in tracing the drift of the commerce decisions was to show the wavering and uncertain attitude of the courts as to the power of Congress and the power of the States in the premises, and to lead up to the recent pronouncements on the subject. The lottery decision certainly clears the atmosphere. Even Marshall's theory of the exclusive character of the power of Congress over commerce did not go nearly so far as to assume that it was so exclusive that the police power which the Constitution expressly reserved to the States could also be appropriated by Congress.

It is true this decision seems to hold that Congress has a general police power as wide as the States, from which it might be inferred, and by the advocates of this bill has been inferred, that if a State under its police powers can prohibit traffic in liquors, then Congress under this newly discovered police power can also do it. But this decision gives no encouragement to such views—the actual basis of the decision being the same as that in cases like *Reed v. Colorado* (187 U. S., 137), where regulations of Congress for the prevention of disease by transportation were upheld. There it was held, for example, that Congress can regulate, and therefore prohibit the transportation of diseased cattle, because by virtue of their diseased character they have lost their commercial qualities. Trading in diseased meat; in crime; in lottery tickets, is not commerce; it is a perversion of the right of interstate commerce to permit it.

- It is a kind of traffic which no one can be entitled to pursue as of right.
- * * It has become offensive to the entire people of the nation.

The whole intent of the act upheld by this opinion was the suppression of a crime which was being carried on through the transportation of lottery tickets by means of interstate commerce. The opinion at page 501 cites the case of *Phalen v. Virginia* (8 How., 163), which held—

that the suppression of nuisances injurious to the public health or morality is among the most important duties of government, and experience has shown that the common forms of gambling are comparatively innocuous when placed in contrast with the widespread pestilence of lotteries. The former are confined to a few persons and places, but the latter infests the whole community.

The justice further says that—

in other cases we have adjudged that authority given by legislative enactment to carry on a lottery, although based upon a consideration in money, was not protected by the contract clause of the Constitution; this, for the reason that no State may bargain away its power to protect the public morals nor excuse

its failure to perform a public duty by saying that it had agreed, by legislative enactment, not to do so. * * *

As a State may, for the purpose of guarding the morals of its own people, forbid all sales of lottery tickets within its limits, so Congress, for the purpose of guarding the people of the United States against the "widespread pestilence of lotteries" and to protect the commerce which concerns all the States, may prohibit the carrying of lottery tickets from one State to another.

* * * The whole subject is too important and the questions suggested by its consideration are too difficult of solution to justify any attempt to lay down a rule for determining in advance the validity of every statute that may be enacted under the commerce clause. We decide nothing more in the present case than that lottery tickets are subjects of traffic among those who choose to sell or buy them; that the carriage of such tickets by independent carriers from one State to another is therefore interstate commerce; that under its power to regulate commerce among the several States Congress, subject to the limitations imposed by the Constitution upon the exercise of the powers granted, has plenary authority over such commerce and may prohibit the carriage of such tickets from State to State, and that legislation to that end and of that character is not inconsistent with any limitation or restriction imposed upon the exercise of the powers granted to Congress. (Lottery case.)

If, then, Congress could prohibit interstate commerce in beer, it could do so only because beer fell within the category of things "confessedly vicious," "offensive to the entire people of the nation," and "confessedly injurious to the public morals." It must class it with lottery tickets and diseased meats.

The power to regulate is not the power to prohibit, except in the very limited sense set forth in the Lottery case. If there is such a thing as a Federal police power, it is exceedingly limited.

McCullough v. Maryland, 4 Wheaton, 316.

License cases (*supra*).

Trade-mark cases, 100 U. S., 82.

Neither is it within the power of Congress to pronounce absolutely upon the commercial character of any article of commerce. That is a judicial question.

License cases (*supra*).

Hooper v. California, 155 U. S., 648.

Congress has no power to narrow or enlarge the meaning of the term "commerce" itself. It can not, for example, declare that goods in transitu are not subjects of commercial intercourse and then allow the States to regulate their transportation.

Stoutenburgh v. Hennick, 129 U. S., 141.

Cherokee Nation v. Son. K. R. R., 135 U. S., 641.

It could not, for example, declare land a subject of interstate commerce and then proceed to prescribe interstate laws for the various States. It can not make that commerce which is not commerce, and it can not take from legitimate commerce those attributes which make it commerce. The subjects of commerce vary as time and human ingenuity change, but the meaning of the word itself is fixed by the decisions. (*Groves v. Slaughter*, 15 Pet., 449.)

Congress can legislate as to the instrumentalities or qualities of commerce, but it can not prohibit—unless it does it because of the qualities which attach to it. The term commerce has its established legal and judicial denotations and connotations. It not only covers intercourse, but the means of intercourse as well; it not only applies to commodities, but to the incidents and qualities that attach thereto. Meat is a subject of commerce, but not diseased meat—its diseased quality removes its commercial character.

If Congress undertook by "regulation" to prohibit commerce in beer, a recognized legal commodity and subject of commerce, even if such action were within the scope of the Lottery decision, the other provisions of the Constitution guaranteeing to every citizen certain rights would nullify it. Under the guise of regulation a State can not deprive any citizen of the lawful use of his property if it does not injuriously affect or endanger others. Nor under the pretense of exercising the police powers can any State enact laws except for the health of the community.

Calder v. Bull, 3 U. S., 3 Dall., 386.

Fletcher v. Peck, 10 U. S., 6 Cranch, 135.

And, of course, such a prohibition would be such a deprivation of property without due process of law, such an interference with the life, liberty, and property of the citizen, and such an "arbitrary and capricious exercise of power" as is both contrary to the spirit of our laws and institutions, and is indeed expressly forbidden by the letter of them.

Minn. v. Ill., 94 U. S., 124.

Yates v. Milwaukee, 77 U. S., 497.

Cooley Const. Lim., 110, 446.

The decision in the Lottery case apparently goes out of its way to differentiate the liquor traffic from lotteries and that class of commerce. "In *Cowman v. Chicago* (125 U. S., 165) this court held that ardent spirits, distilled liquors, ale, and beer were subjects of exchange and barter and traffic, and were so recognized by the usages of the commercial world, as well as by the laws of Congress and the decisions of the courts." And, indeed, he might have cited a number of decisions to the same effect.

Congress therefore could not pass a law prohibiting interstate commerce in liquor, because they are judicially, legislatively, and commercially recognized as lawful articles of commerce, and are to that extent as much under the protection of the Constitution as are tea, coffee, butter, sugar, or any other lawful commodity.

Even if it be contended that the so-called police power of Congress is so coequal with that of the States—a proposition absurd on its face—it can not be argued that the reasoning which the courts adopted in sustaining State prohibition would also apply to Congressional prohibition. The character of police power under which the State laws were upheld is entirely in the domain of and is by the Constitution expressly reserved to the States. If the Federal Government has any police power it is of a different character, as the Lottery case itself indicates.

It is vital that the independence of the commercial power and of the police power and the delimitations between them, however, sometimes perplexing, should always be recognized and observed, for while the one furnishes the strongest bond of union the other is essential to the preservation of the autonomy of the States as required by our dual form of government; and acknowledged evils, however grave and urgent they may appear to be, had better be borne than the risk be run, in the effort to suppress them, of more serious consequences by resort to expedients of even doubtful constitutionality.

U. S. v. E. C. Knight Co., 156 U. S., 13.

U. S. v. Dewitt, 9 Wall., 41.

In fact, this question is sufficiently answered by asking another. Suppose there was no prohibition in any State nor any sentiment

or demand therefor and Congress were to pass a law prohibiting interstate commerce in liquor—would it be constitutional?

This is not the place to review the State and Federal decisions upholding prohibitory laws; but it may be observed in passing that these decisions have been severely criticised by jurists, one of the latest comments being well worth quoting (Tiedman, *State and Federal Control*, p. 554):

This, therefore, is the conclusion reached after a careful consideration of all the constitutional reasons for and against the protection of the liquor trade; the prohibition of the manufacturing and sale of spirituous and intoxicating liquors is unconstitutional, unless it is confined to the prohibition of drinking saloons and the prohibition of the sale of liquor to minors, lunatics, confirmed drunkards, and persons in a state of intoxication. As has already been explained, there is an almost unbroken array of judicial opinions against this position, and there is not any reasonable likelihood that there will be any immediate revolution in the opinion of the courts. But it is the duty of a constitutional jurist to press his views of constitutional law upon the attention of the legal world, even though they place him in opposition to the current of authority.

Congress has no more power than has a State to declare that a nuisance which in fact is no nuisance. That must be determined by due process of law; and by the judicial and not the legislative branch of the Government.

2 Story Eq. Jur., Par. 923.

Murray v. Hoboken, 59 U. S., 280.

Walker v. Sawvinet, 92 U. S., 93.

Hudson v. Thorne, 7 Paige, 261.

The nature of the "nuisance" is therefore one of the determining factors. Such a law certainly would not stand unless the manufacture, sale, and transportation of beer is a crime or such a menace to health or such an iniquitous nuisance as to be abhorrent or contrary to the police regulations of all the States. And this it is not. So that in this sense it is the duty of this committee, just as it would be the duty of the courts in considering this bill, to consider also the character of the industry it affects—its place in the community, its nature, size, and importance. This is not the place to review these, but this committee will not forget so far as the beer industry is concerned, that its ancestry is honorable—even patrician. It can trace back its history for many centuries. It was fostered by the colonial government and expressly set forth in Hamilton's famous report as an article that should be encouraged and taxed lower than ardent spirits, because it would "benefit agriculture and open a new and productive source of revenue." From the very beginning of our Government it has contributed largely to our revenues, and since 1862, when the present tax of a dollar a barrel was imposed as a war tax, it has paid, in exact figures, over \$1,000,000,000 to the Treasury of the United States. Under the fostering protection of the Constitution and the laws of Congress it has become in some senses our largest manufacturing industry, over \$800,000,000 of actual capital being invested in its plants. The labor and agricultural and other interests dependent upon the brewing industry would be even more appalling if they were set forth statistically. Millions of acres of land are required to raise the hops, barley, corn, rice, sugar, hay, oats, wheat, stock, etc., used, and millions of men, women, and children directly and indirectly are dependent upon this industry for their livelihood. And of equal

importance is the fact that beer is the nation's drink, or rather it is the nation's food, for

be it understood, especially by those radical temperance people who talk so much and know so little about beer, that nearly, if not quite, one-half of the world's big yield of beer (about 6,725,126,500 gallons per year) is taken with meals, the same as some drink tea and coffee. (W. A. Lawrence, Facts About Beer.)

Another answer to this question, and one that goes also to the vitals of the present bill, is that it is an unconstitutional limitation upon the right of natural and civil liberty. It is one of the inalienable rights of every citizen of this Republic to form business relations, enter into contracts, sell his wares, and his services, free from the dictation of the State, and the only exceptions to this are those covered by the police requirements, and by provisions for a reasonable price, etc., where property becomes "affected," as Chief Justice Hale puts it in his *De Partibus Maris*, "with a public interest and ceases to be *juris privatis* only."

Chicago v. Iowa, 94 U. S., 155.

Slaughterhouse cases, 116 Wall., 36.

Minn. v. People, 94 U. S., 113.

This bill partakes of the nature of sumptuary legislation, and on this aspect alone a volume of objections could be written.

In former times sumptuary laws were sometimes passed, * * * but the ideas which suggested such laws are now exploded utterly, and no one would seriously attempt to justify them in the present age. The right of every man to do what he will with his own, not interfering with the reciprocal rights of others, is accepted among the fundamentals of our law. (Cooley's Const. Lim., 385.)

This kind of interference with individual liberty is foreign to the spirit of our law and the genius of our civilization. "To pursue one's own good in one's own way," to quote John Stuart Mill, "means individual liberty." To permit any legislative body or any numerical majority or minority to define the "way" or to determine the "good" is tyranny. Nothing could be more opposed to the spirit of our laws than prohibition, either direct or indirect, nor could anything be more antagonistic to the American ideal of individual rights than is this bill. The doctrine of the police power has, it is true, been carried very far by judicial interpretation in this country, "but broad and comprehensive as is this power, it certainly can not extend to the individual tastes and habits of the citizen, which are confined entirely to himself." (License case, 5 How., 583.)

Not even the local community has a right to determine that men shall not drink alcohol. * * * Has a rural community in Maine, which thinks the saloon is an injury, a right to prohibit the saloon to the people of Bangor or Portland, who entertain a different opinion? If so, on what is that right based? * * * It must be based on the supposed right of the majority to impose their conscience on the minority, to determine for them what is safe and right, to act toward them in *loco parentis*; and this right of the majority to act in *loco parentis* toward the minority is fundamentally antagonistic to the essential principle of a democracy.

The whole conception of this bill is fundamentally opposed to the American notion of personal liberty; but not only that, it creates the very evils it would check. Temperance will never come in by the prohibition route, and Congress certainly ought to bow to the popular sentiment. Temperance is one thing, prohibition another, at least

so Bishop Potter declares. And his letter to Doctor Abbot, in the Outlook of March 11, 1899, is worth quoting:

* * * It is the old situation—as old as the religion of Jesus Christ—with the Scribes and Pharisees on the one hand, the Sadduces on the other, and over and against them the truth.

No more perfect reproduction of the first-named has appeared in our day than the Prohibitionists; et id omne genus—arrogant, denunciatory, ignorant, unscrupulous, and untruthful; holding one meager fragment of truth to their eyes, and denying great and fundamental facts in human nature, in their futile and foolish endeavor to remedy the perversion of human instincts by extirpating them. The grotesque hypocrisy of prohibition system, from Maine to Kansas, is a sufficient commentary upon their theories. Meantime, the endeavor of wiser men and women to better the condition—the homes, the domestic life, the recreations—of their less-favored brethren go untouched of these fit successors of those to whom Jesus said: "Woe unto you, Scribes and Pharisees, hypocrites, for ye bind heavy burdens upon men's shoulders, and grievous to be borne, and ye yourselves will not touch them with the tips of your fingers."

That is why prohibition laws can not be enforced and why Iowa now wants this assistance from Congress to enforce its own laws. And if they can not be enforced, that alone is a good argument why they should not be passed. For if there is one principle that the history of law and legislation teaches with unerring precision, it is, not only the utter futility as a corrective measure of a law whose enactment is not the necessary and unavoidable resultant of the social forces then at play in organized society, but also the great injury inflicted upon law in general by the enactment of laws before their time.

Respectfully submitted.

ROBERT CRAIN,

General Counsel United States Brewers' Association.

SUPPLEMENTARY BRIEF FILED ON BEHALF OF THE BREWERS OF THE COUNTRY BY ROBERT CRAIN, GENERAL COUNSEL, THE UNITED STATES BREWERS' ASSOCIATION.

Hearing before the Committee on the Judiciary of the House of Representatives on the bill (H. R. 13856) entitled "A bill to prohibit express companies and other common carriers from importing from foreign countries into certain localities of the United States and from transporting from one State into certain localities of another State intoxicating liquors when carried to be delivered with the charge to collect on delivery," and on the bill (H. R. 13655) entitled "A bill to limit the effect of the regulation of commerce between the several States and Territories in certain cases." Fifty-ninth Congress, first session.

This brief is submitted as supplementary to and part of one filed February 21, 1906, before this committee at its hearing on the Hepburn-Dolliver bill (H. R. 3159)—a bill to amend the Wilson bill so as to enable State laws to become operative on shipments of liquor upon arrival at State boundaries both before and after delivery.

H. R. 13655, introduced by Mr. Littlefield, covers the same ground and would have the same effect as the Hepburn-Dolliver bill, and all that has been said about that measure applies equally to it. H. R. 13856, introduced by Mr. Williams, aims to punish express companies for carrying interstate C. O. D. liquor shipments. The same legal

principles and the same objections, legal and economic, underlie all these measures. Both of the bills here considered, like the Hepburn-Dolliver bill, are attempts to overcome or get around the law of the land as laid down by the Supreme Court of the United States in some specific decision to which the prohibitionists object.

The Supreme Court in *American Exp. Co. v. Iowa* (196 U. S., 140), applying long-established and fundamental legal principles, and following the overwhelming authority of the decisions and text writers, held that "intoxicating liquor shipped C. O. D. from one State into another can not be subjected to seizure under the laws of the latter State while in the hands of the express company without infringing the commerce clause of the Federal Constitution." These bills are an attempt to direct the court to reverse itself and to change the organic law.

In the brief heretofore filed the power of Congress in the premises was analyzed in the light of the decisions, and what is said there is entirely applicable here. These bills are bad for the reasons set forth at considerable length in that brief and reference is made to its citations of authorities for the following propositions equally applicable here:

1. The power of Congress to regulate commerce between the States is not a power to destroy. It can not be exercised arbitrarily or so as to result in confusion, discord, and inequality, making one law for one State and a different law for another State. The power to regulate is not the power to prohibit legitimate commerce.

2. This power to regulate commerce can not be delegated to the States.

3. No State can be empowered to pass any law having a direct extraterritorial effect.

4. The making of legitimate contracts, negotiations, intercourse, etc., are themselves "commerce," and Congress can not destroy the right to engage therein.

These bills would have all these legal consequences, and therefore ought not to pass. For the evils which it is hoped they might correct no defense is offered. The brewers of the United States are not in sympathy with "blind tigers," "boot-leggers," and evasions of the law, but they are solicitous that they be not deprived of those fundamental rights which the Constitution and the law of the land guarantees to them, and that they be not deprived of their property and their trade by ill-advised and vindictive legislation.

It is not necessary here to recite again the long line of authorities indicated in my former brief which with steady uniformity limit the power of Congress to interfere with interstate commerce under the guise of regulation, nor to repeat what was said there as to Federal police power. "Commerce" is given a definite legal meaning and the right to trade, to have intercourse, to contract, as well as other pertinent rights are constantly recognized as so fundamental that neither the States nor Congress can destroy them. Even the right "to negotiate" is of this character.

The negotiation of sales of goods which are in another State, for the purpose of introducing them into the State in which the negotiation is made, is interstate commerce. (*Caldwell v. N. C.*, 187 U. S., 628.)

The right to contract for the transportation of merchandise from one State

into or across another involves interstate commerce in its fundamental aspects. (*Rhodes v. Iowa*, 170 U. S., 424.)

Commerce consists in intercourse and traffic, including transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities. (*Mobile Co. v. Kimball*, 102 U. S., 691; *Gloucester Ferry Company v. Pennsylvania*, 114 U. S., 196.)

It is true that the court in a recent case says that no opinion is expressed as to the constitutional right and power of Congress to permit any State to interfere with such fundamental or incidental aspects of commerce, as the right of sale, stoppage in transitu, etc., but the implication that Congress has no such power is inevitable. These bills assume that there are no limitations upon the power of Congress to do these things under the guise of regulating commerce. On the contrary, as shown in the brief referred to, these limitations are well established and clearly pertinent to the issues raised here.

How far Congress might go under its own interpretation of the powers delegated to it was the one great question thrashed out at the time of the adoption of the Constitution. The chief objection of a number of the thirteen original States to the Constitution was that it left in this respect too arbitrary a power in Congress; that under the guise of regulating commerce, for instance, Congress could so construe this power as to pass any law which it thought necessary and proper in aid or furtherance of a general power so broad and apparently so absolute. The answer of Hamilton in the *Federalist* (*The Federalist*, No. 78) was that Congress could not by its mere declaration make necessary and proper to the execution of its powers that which in its essence was not necessary and proper; and so suspicious were the States of these arbitrary general powers like the commerce clause, etc., that before the Constitution could be adopted a number of limitations affecting most intimately the liberties of the individual had first to be incorporated in the various amendments. For instance, the regulation of internal commerce was carefully reserved. The police power was reserved. (*N. O. Gas Company v. Louisiana*, 115 U. S., 650.) In other words, the very spirit in which the powers of Congress were delegated to it show that its power to regulate commerce between the States, while plenary is not arbitrary—it is subject to such limitations or restrictions as the Constitution itself in letter and spirit imposes. It can not pass laws which are hostile to the very objects for the accomplishment of which Congress was given its powers. But even if it had the absolute power to regulate this commerce as it pleased, it certainly could not abdicate the power nor delegate it to the States; and even more certainly it could not delegate to a State the power to destroy or to prohibit (*Interstate Commerce Commission v. Brimson*, 154 U. S., 447) any more than it can, for example, pass a law which as an intended regulation of commerce operates directly upon internal commerce and invades the domain of the States. (*Trade-Mark cases*, 100 U. S., 82.)

Nor can it for considerations of expediency or to placate temperance sentiment give the provisions of the Constitution new meanings. If it could, then "there is no power which may not, by this mode of construction, be conferred on the General Government and denied to the States."

Passenger cases, 7 How., 283.

Ex-parte Weber, 18 How., 307.

Now, the abolition of C. O. D. shipments does these very things. It absolutely prohibits, in effect, this class of trade. It abolishes the law of sales to this extent. It puts a new construction on the power of Congress to regulate commerce. It invades every State and says to its citizens, wherever another State has passed a prohibitory law, with the citizens of that State you can not contract according to the laws of the land, the laws of trade, or the laws of sales. The rights of the citizen of the nonprohibiting States must be respected by Congress. This bill delegates to Iowa, for instance, the power to affect and destroy rights belonging to the citizens of Illinois. If Congress can not destroy these rights directly, it can not do so indirectly, and it certainly can not, as these bills do, delegate to the States the power to do so.

The most superficial analysis of the law of sales or of the nature of the contract involved shows that under this bill the laws of any State taking advantage of it would have an extraterritorial effect. They could have no other. For C. O. D. shipments between citizens of the same State can be reached without this act; it is the citizen of the other State they are after. His rights and privileges and immunities are to be taken away from him. And this is unconstitutional.

Passenger cases, 7 How., 492.

Slaughterhouse cases, 16 Wall., 36.

The liberty protected by the Constitution embraces the right to be free in the enjoyment of one's faculties, to be free to use them in lawful ways, to live and work where he will, to earn his livelihood by any lawful calling, to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper. (*Allgeyer v. Louisiana*, 165 U. S., 578.)

To accomplish the ends aimed at by these bills without the aid of Congress, some of the States in the ardor of their prohibition zeal reversed the law of sales to suit their purposes, and held that under a C. O. D. shipment the property is sent at the risk of the seller, and that the sale is not completed until the payment of the price and delivery to the consignee at the point of destination, and that therefore the sale took place in the State of the consignee, and the State law could therefore reach him (118 Iowa, 447). This, of course, is not the law and never has been.

Justice White says, in *American Express Co. v. Iowa* (196 U. S., 142):

Beyond possible question the contract to sell and ship was completed in Illinois (the place of the C. O. D. shipper). The right of the parties to make a contract in Illinois for the sale and purchase of merchandise, and in doing so to fix by an agreement the time when and condition on which the completed title should pass, is beyond question. The shipment from the State of Illinois into the State of Iowa of the merchandise constituted interstate commerce. To sustain, therefore, the ruling of the court below would require us to decide that the law of Iowa operated in another State so as to invalidate a lawful contract as to interstate commerce made in such other State, and, indeed, would require us to go yet further and say that although, under the interstate-commerce clause, a citizen in one State had a right to have merchandise consigned from another State delivered to him in the State to which shipment was made, yet that such right was so illusory that it only obtained in cases where in a legal sense the merchandise contracted for had been delivered to the consignee at the time and place of shipment.

When it is considered that the necessary result of the ruling below was to hold that wherever merchandise shipped from one State to another is not completely delivered to the buyer at the place of shipment, so as to be at his risk

from that moment, the movement of such merchandise is not interstate commerce, it becomes apparent that the principle, if sustained, would operate materially to cripple, if not destroy, that freedom of commerce between the States which it was the greatest purpose of the Constitution to promote. If upheld, the doctrine would deprive a citizen of one State of his right to order merchandise from another State at the risk of the seller as to delivery. It would prevent the citizen of one State from shipping into another unless he assumed the risk; it would subject contracts made by common carriers and valid by the laws of the State where made to the laws of another State, and it would remove from the protection of the interstate-commerce clause all goods on consignment upon any condition as to delivery express or implied. Besides, it would also render the commerce clause of the Constitution inoperative as to all that vast body of transactions by which the products of the country move in the channels of interstate commerce by means of bills of lading to the shipper's order, with drafts for the purchase price attached, and many other transactions essential to the freedom of commerce by which the complete title to merchandise is postponed to the delivery thereof.

And now come the proponents of this bill before this Congress and ask that any State that so desires be authorized to accomplish these very evils which Justice White, speaking for the highest tribunal of this country, so brilliantly portrays. Will Congress say to any State, in the language of the Supreme Court, you may (1) pass laws in your State which will invalidate contracts in another State and will change the laws of sales, of contracts, of carriers, etc., in such other State? (2) You may "cripple, if not destroy, that freedom of commerce between the States which it was the great purpose of the Constitution to promote?" (3) You may change the law of carriers, of contracts, of sales, of bailment, of consignment, so that it varies with the whims and vagaries of the different States? (4) You may "render the commerce clause of the Constitution inoperative" as to all shipments with bill of lading, sight draft attached, and as to "many other transactions essential to the freedom of commerce?" (5) You may pass your various bills and destroy that uniformity of law and dispose with that general rule heretofore required to be applicable to all the States alike, requirements supposed to have been the occasion of this commerce clause and of the Constitution itself?

Congress may answer all these questions in the affirmative and pass these bills and give the States the power to accomplish these disastrous ends, but the Supreme Court will never uphold it.

Should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not intrusted to the Government, it would become the painful duty of this tribunal * * * to say that such an act was not the law of the land. (*McCulloch v. Md.*, 4 Wheat., 316.)

As the Constitution itself does not draw the line (as to the extent and limits of this power), the question is necessarily one for judicial decision. (*License cases*, 5 How., 574.)

The extraterritorial effect which this bill would give to State laws would alone invalidate them. For, mark you, it is not this C. O. D. bill which in reality changes the law of sales or the rights of any citizen. That law stays as it is and his rights are unaffected until the State speaks. As soon as it does speak it at once reaches beyond its borders, and puts into operation powers lodged only with Congress.

In the recent case of *Kehrer v. Stewart* (197 U. S., 60), Nelson Morris & Co., of Chicago, had a sales agent in Atlanta, Ga., in which

State there was a general license tax of \$200 on all agents of packing houses doing business therein. The court said that as to all goods sold in Chicago and delivered to a common carrier for delivery to such agent for distribution in Georgia such tax was clearly an illegal interference with interstate commerce. To that extent the State law had an extraterritorial effect and was bad. The body corporate as a citizen of Illinois had rights, privileges, and immunities—one of which was to make this contract of sale—which the State of Georgia had to respect. And these same rights, privileges, and immunities are so fundamental and inherent in the very origin, nature, and purpose of our Government that even Congress can not abridge nor destroy them.

The rights of the citizen in the nonprohibition States are the forgotten factors here and they are the controlling factors. Congress can not deprive him of his constitutional rights. It can not add to nor subtract from the police power of any State so as to reach him. He has certain rights as a citizen of the State and also as a citizen of the United States; and among these, as Justice Field says, are the right to work and trade and ship and negotiate and enter into all proper contracts and have them carried out. All the arguments in support of these bills rest on a false premise and that is that liquor is an illegitimate article of commerce. The fact that certain States or counties or villages so treat it doesn't make it such in States that regard it otherwise, and the rights of the citizen in the State not so treating it must be respected by Congress, unless Congress itself is ready to class it with lottery tickets and diseased meats and shut it out from commerce entirely—if it can.

This limitation on the power of Congress is fairly well illustrated in the late case of *Re Huff* (197 U. S., 448), in which one of these acts passed in 1897 at the instance of our prohibition friends was held unconstitutional. By this act it was made a Federal penal offense for anyone in any way to furnish any Indian liquor "to whom allotment of land has been made," etc. Although the various allotment acts provide that "every Indian to whom allotment shall have been made * * * is declared to be a citizen of the United States and is entitled to all the rights, privileges, and immunities of such citizen" * * * there was nevertheless, so far as title went, a modified form of wardship. Because the States could not stop these thirsty redskins from violating their State laws, they took advantage of this technicality and had this act of 1897 passed in the hope that the Federal Government could do what the State government couldn't. The Supreme Court says Congress has no such power. And in this opinion the court also says a few things that ought to clear up some of the confusion that seemed to exist in the minds of a number of gentlemen at a recent hearing before the Ways and Means Committee on the bill to compel officers of the Federal Government to testify in prohibition districts as to Federal licenses issued, etc.:

In this Republic [says Justice Brewer] there is a dual system of government, national and State; each within its own domain is supreme. * * * The general police power is reserved to the States, subject, however, to the limitation that in its exercise the State may not trespass upon the rights and powers vested in the General Government. The regulation of the sale of intoxicating liquor is one of the most common and significant exercise of the police power. And as far as it is an exercise of the police power it is within the domain of State jurisdiction. It is true that the National Government exacts licenses as

a condition of the sale of intoxicating liquor, but that is solely for the purposes of revenue and is no attempted exercise of the police power. * * * Now, this act of 1897 is not a revenue statute, but plainly a police regulation. It will not be doubted that an act of Congress attempting as a police regulation to punish the sale of liquor by one of the citizens of a State to another within the territorial limits of that State would be an invasion of the State's jurisdiction and could not be sustained. * * * There is in these police matters no such thing as a divided sovereignty.

From which it follows that if Congress can not subtract from the police power of the State, neither can it add thereto; neither can it arrogate to itself a superior police power and override the State.

The extraterritorial features of these bills and the legal consequences arising therefrom are also covered in the *Rahrer* case (140 U. S., 545), where the court, in upholding the *Wilson* bill, says:

If the act of Congress be construed as reaching the contract for interstate shipment made in another State, the necessary effect must be to give to the laws of the several States extraterritorial operation, for, as held in the *Bowman* case, the inevitable consequence of allowing a State law to forbid interstate shipments of merchandise would be to destroy the right to contract beyond the limits of the State for such shipments. If the construction claimed be upheld, it would be in the power of each State to compel every interstate-commerce train to stop before crossing its borders and discharge its freight, lest by crossing the line it might carry within the State merchandise of the character named covered by the inhibitions of a State statute.

These bills are also bad for depriving the individual of certain rights of personal liberty, as well as the freedom to trade and to contract, guaranteed to him by the Constitution. For in their final analysis these measures are not aimed at the man who violates the State law so much as at the man who violates the teetotaler's ideal; in other words, they want to get at the citizen who imports for his own use. They want to make it difficult for him to get his liquor by stopping his right to buy it C. O. D. and see what he is getting before he gives up his money; by having the right to halt and inspect, and if in doubt, confiscate his importation at the State boundary; by putting him to all the trouble and harassment and notoriety they can, and by putting him under the odium of suspicion every time he gets any shipment. None of these bills ask for this openly because the Supreme Court in *Vance v. Vandercook* and elsewhere has announced that such a law would be unconstitutional; they therefore try to get the same results by these indirect ways. In no single aspect are they regulative of commerce—they are prohibitive in intent, in theory, and effect.

Respectfully submitted.

ROBERT CRAIN,
General Counsel United States Brewers' Association.

AFTER RECESS.

(The continuation of the statement of Mr. Robert Crain was temporarily deferred.)

STATEMENT OF CHARLES JOHN HEXAMER, ESQ., OF
PHILADELPHIA.

Mr. HEXAMER. Mr. Chairman and gentlemen of the committee, I shall be very brief, because I have thrashed out all I had to say at the hearing of the Committee on the Judiciary in 1904.

I am the president of the National German-American Alliance, which, I may say, is a patriotic American association composed of people of German birth or extraction. We have one and a half million members, and they are all taxpayers and all citizens of the United States.

Mr. Chairman, our opposition to this bill is simply this: That we are opposed to prohibition in any way, shape, or form, because we honestly and sincerely believe that prohibition causes intemperance. We are a temperate people and believe that any temperance legislation is mischievous. We believe that we should have in you, our national legislators, a strong bulwark against all encroachments, against all shrieks of fanatics. Let them, if they like, have in their different sections local option if the majority so desire. Let them, if they like, have their prohibition in certain States if the majority wish so. But we say to you, do not crush out an intelligent minority.

Mr. Chairman and gentlemen of the committee, I shall not occupy your time, but I have brought with me here a number of gentlemen, new faces, members of our alliance, and I will simply state that we are opposed to this measure because it is the entering wedge of the Prohibitionists. We believe that the passing of this measure would cause endless strife and litigation and be the cause of blackmail and political corruption and would create hypocrites, sycophants, sneaks, and smugglers.

And let me state, Mr. Chairman, and I say this simply for information and from no other cause—I deplore it deeply, because I think that a matter such as prohibition should not be a matter of politics—but I have to say to you in all fairness that we have in the United States over 700 German newspapers, and there is not a single one that I know of that is not against this measure, and the members of our alliance are stretched all over the United States. We have representatives in every State, and they are intently watching this matter; and not only the million and half people of our alliance, but millions more who feel with them and think as they do are intently watching the Congressmen of every district, and I say to you, not as a threat, for I say that I deeply deplore it personally, but I say to you that those men are members of the Democratic party and the Republican party, and they will stand together as one man, and they will do everything in their power to crush every Congressman and to prevent his return, who will vote for this bill, ultimately. I do not say this as a threat. I say it because I, as an American citizen, American born, deeply deplore it. But I think it would be an exceedingly unwise measure for even this committee to allow this measure to get before Congress.

Mr. Chairman, the notice for this meeting was exceedingly short. I have my pocket filled with letters from different centers that clamor to be heard. I have brought with me the few men whose presence I possibly could secure on such short notice, representative German-American men, who have held high public positions in our public life and in business and in commerce, who will address you, if you will kindly permit them to do so. I hope, however, gentlemen, that you will allow the members from other sections, who are clamoring to be heard, to also receive a chance to appear before you. I would most respectfully beg that you allow another hearing, say in about a month

from now, when we can get them together. They will have much to say to you that will be of interest, and, I think, will clear and clarify matters and make them more limpid.

Mr. TIRRELL. Is that society opposed to local option?

Mr. HEXAMER. No, sir—we are, too; but we are opposed to prohibition in any way, shape, or form.

Mr. TIRRELL. Another question. Are you opposed to any restriction or regulation of the liquor traffic by State or national enactment?

Mr. HEXAMER. We believe that every State has sufficient police power, or should have, to take care of itself. We are opposed to having the National Legislature interfere with State regulations of that kind. We believe that the State that has become so atrophied that it has to call upon the National Legislature to enforce its own police control is in a deplorable condition.

Mr. TIRRELL. If local option, to which you say you are not opposed—

Mr. HEXAMER. We are opposed to local option, too. We are opposed to restriction of any sort. We believe that any prohibition measure will only make things worse. In other words, take a man who would not think of taking a drink, and the moment you forbid that man to take a drink he will say: "Now, I will have it, by all means." Forbidden fruit is always sweet. Go into your temperance resorts and see what the conditions are. I have been there. I have gone down into the basements of the hotels, at places at Asbury Park, and I have never seen such scenes of debauchery and drunkenness as I have there among the young people. Why, those young fellows would not think of taking a drink ordinarily, but they know that they ought not to have it in that place and they go down there because they know it is prohibited, and it tastes sweet and good to them.

We believe that any restriction of that kind will certainly make matters worse. I can assure you, Mr. Chairman and gentlemen, that there is not a single person who has come with us to-day who, if he thought he could blot out drunkenness by self-abnegation or that he could blot it out by promising to-day not to touch a drop of liquor in his life—if by doing that he could crush out the horrible curse of drunkenness, I say there is not one man here to-day who would not willingly and cheerfully at once promise not to touch a drop. These people are temperance men, but it is because they know and because history teaches us what horrible examples and what a horrible curse prohibition has been to the United States that we oppose it.

I read to you in the previous hearing the statements of men who were entirely unbiased in every way, such as Seth Low, Charles W. Eliot, and James C. Carter, who have said:

"There have been concomitant evils of prohibitory legislation. The efforts to enforce it during forty years past have had some unlooked-for results on public respect for courts, judicial procedure, oaths, and law in general, and for officers of the law, legislators, and public servants. The public have seen law defied, a whole generation of habitual lawbreakers schooled in evasion and shamelessness, courts ineffective through fluctuations of policy, delays, perjuries, negligences, and other miscarriages of justice, officers of the law double-faced and mercenary, legislators timid and insincere, candidates for office hypocritical and truckling, and officeholders unfaithful to pledges and to reasonable public expectation."

Such are the ideas of Charles W. Eliot, Seth Low, and James C. Carter in their introduction to a record of their investigation of the liquor problem. We do not care for the beer; we do not care for the wine. I myself once in a while take a drink with friends at the table, but at my own house I do not use liquor. I drink mineral water. We are here because history has proved that prohibition does not cause true temperance; that it is a curse, and that where a man would publicly formerly drink a light beverage—an innocuous beverage that can not harm, like beer—they will afterwards smuggle whisky into their homes. And what is still worse, women, who are too timid to go and buy the whisky, will smuggle into their homes patent medicines that are stronger than the whisky sold in commerce.

I will now introduce, with your kind permission, Mr. Adolf Lankering, former mayor of Hoboken, who will address you.

STATEMENT OF ADOLF LANKERING, ESQ., OF HOBOKEN, N. J.

Mr. LANKERING. Mr. Chairman and members of the committee, I shall be very brief, and in order to do so I would like to read my sentiments and the sentiments of my constituents:

With your kind permission I appear before you to express my views on bill H. R. 4072, commonly known as the Hepburn-Dolliver bill, which has for its purpose to aid State authorities in the prohibition of traffic in intoxicating liquors.

It is not my intention to dissect the proposed measure or pass upon its general form or speak upon its bearing from a legal standpoint.

I have come here to express the sentiment of thousands of people of the State of New Jersey and thousands of more in sympathy with them residing in other States of the Union.

My live interest in the affairs of our Federal, State, and local government and, finally, my experience as the executive of the city of Hoboken during the last four years place me in a position to pass upon legislation of a character like that referred to and now in your hands for consideration.

I am in this country over thirty years, have been employed in the earlier part of this period of my life as a traveling salesman, and have had the opportunity to learn the conditions in States where efforts have been made to establish temperance through the enforcement of State and local laws prohibiting the sale and use of liquors in any form for other than medical or manufacturing purposes.

Have the people responsible for these laws been successful? No; and they never will be, because every law must be inefficient when there is not public sentiment favoring the enforcement and when officials, elected by the people for the purpose of enforcing laws regulating the local government, are naturally guided by the sentiment prevailing among their constituents.

Have they raised the moral standard of the population in the States or local districts affected? No; on the contrary, they have in my eyes lowered the moral standard when they induce men, otherwise respectable and of good character, to apply to a physician and obtain under false representation a prescription for spirits frumenti, with perhaps some other harmless stimulant mixed, in order to meet

legal requirements and their desire for some liquor, when they induce men to invent all kinds of schemes to obtain the liquid, which schemes are in contradiction to their principles and an insult to their manhood and a shame to self-respect.

Still these men feel that it is their sacred right and privilege to select their own food and their refreshments. They feel that, as citizens and men of age, the Government has no right to appoint guardians over them, vested with the authority to dictate what they should eat and drink.

It would take too long to picture the disgraceful scenes which I have witnessed in my travels through the prohibition States, and oftentimes I have asked myself, When will the time come when such disgraceful conditions will be made impossible to exist?

Gentlemen, temperance can only be established by education, by upbuilding all that makes a man, nursing the root of self-respect—love and pride in personal accomplishments.

The American people have become a great race and have taken the lead in the civilized world, and with pride may any man proclaim his citizenship as an American wherever he goes. He must, however, remain free, self-dependent, and without shackles. He should be held responsible for his own deeds, for his own conduct, and in his social life he must display the qualities of an American gentleman.

The occasional drink of a glass of wine, of a glass of beer, or a drink of whisky does not interfere with his manly principles and the unwritten laws of good behavior; but the dictations of temperance fanatics, and laws dictated by intolerance and hypocrisy do.

Where in the civilized world do you find men of real learning, men of science, advocates of progress and the advancement of modern and broad ideas who would indorse the means employed by advocates of temperance in our prohibition States? Name one, and upon investigation I will trace his motives to selfishness or idiocy. With them it is either business or fanatical narrow-mindedness. If this Government should ever fall into their hands, the blessing of the Almighty could not save us from destruction, morally and commercially.

To my appealing words some one may say that the efforts of the temperance advocates are not directed against the gentlemen who know how to drink and keep supplies in their comfortable homes for the accommodation of themselves and their families and friends, but against the unfortunate in less favorable circumstances, the workmen and laboring classes in general.

Such argument would remind me of an answer which I received some years ago in a very busy little city in one of the New England States when I put the question why they had no licensed public places where the factory employees could get a glass of beer or wine.

I was told that the manufacturers under the existing regulations at that time were successful in preventing the granting of any liquor license, because the men would be in position to work for less wages if they were not given the opportunity to spend any money for beer or other beverages, and, besides, they said, according to the ideas of the employers it was not well to invite the habit for the workmen to come together in public places during their leisure time to "talk matters over." They would be better off home. How kind, I thought.

Times have changed; the American laborer has made rapid advances and has become accustomed to think for himself and to realize what is best for himself. The American wage-earner, as a class, is moderate in the use of intoxicants. He has benefited as well by the general advancement of this country and the elevation of our educational standard. He can well be trusted under a liberal government.

The city mayors of this country know this, and I say, with others who have benefited by the experience as executives of municipalities: "The least governed people are the best people." Whenever and wherever extreme measures are applied to restrict or prohibit the sale and consumption of liquors hypocrisy and corruption are the result.

Permit me to advise, with Rev. W. Qeser, of Philadelphia, "Keep your hands off and do not report this bill for passage."

Mr. HEXAMER. With your kind permission, Mr. Chairman, I will next call Col. E. C. Stahl, of Trenton, N. J., who is the past commander of the Grand Army of the Republic of the State of New Jersey.

STATEMENT OF COL. E. C. STAHL, ESQ., OF TRENTON, N. J.

Mr. STAHL. Mr. Chairman and gentlemen of the committee, the address of the gentleman who opened the argument to-day, Mr. Dinwiddie, has taught me one thing, and that is that it would be unwise for me or any of us laymen to attempt before this aggregation of distinguished jurists to say anything about the legal bearing of this measure or the laws under the United States Constitution, or the State laws, that you gentlemen are no doubt yourselves better acquainted with than anyone that can come before you. And it is certain that I and the gentlemen that accompany me here to-day do not come with any sort of irreverence toward the law. We are law-abiding people. I think when you look at the lapel of my coat you will admit that the man who for five years bared his breast to the front will not come to you and ask for any law that is against the interests of this land and the glory of this Constitution and the rights we enjoy. We come here, and I come here, before you gentlemen to speak simply as a layman, to speak as one to give you, in my humble way, the impression that a vast majority of people in this country have of the measure that is now proposed before you.

It is true that the parties who are here and speak in favor of this measure claim, and I believe I read in the previous hearings that they claim they have 20,000,000 people behind them who ask for this bill. The 20,000,000 people must be confined to those States where prohibition laws have been enacted.

Mr. Chairman, I personally and all those in whose behalf I may be allowed to speak are opposed to prohibition laws simply because, as has been stated, prohibition has never prohibited. There has never been a State in which prohibitory laws—extreme prohibitory laws—have been introduced where drunkenness has not been going on. The gentleman who stood here this morning said that in the State of Iowa, before the decision of the Supreme Court upon the Wilson Act, no liquor was delivered by the express companies, and that after that decision it was piled up sky high; and that same gen-

tleman admitted that there must have been people in his State who wanted that liquor or the express company would not have brought it there. Therefore prohibition does not prohibit and never has prohibited. As the distinguished president of our association has said, wherever it has gone it has made sneaks and liars and deceitful people instead of making honest, upright citizens.

As to these people who claim that they have got 20,000,000 people behind them in prohibitory States, I have found what you, Mr. Chairman, and you gentlemen of the committee yourselves, have always known, that in none of those States have any of their prohibitory laws been able to crush the drink element—that is, men will drink. Men have always drank, and I for one hail with pleasure any law that you could put on any statute book that would diminish the love for drink. I would hail with delight any law that could be enacted that would stop the evil of drink or, rather, the abuse of liquor.

Everything, Mr. Chairman, is abused in this world—not only liquor—and the man who wants it will get it if you pile your statute books that high with nothing but prohibitory laws. As has been said by the gentleman here who has not completed his argument [Mr. Crain], the law is useless; it will never accomplish anything. But why do these people come here? I am simply giving you the opinion of the layman. I am simply giving you the opinions as expressed by the press that is liberal-minded, opposed to this legislation, the press of which I partly represent a humble share. They are simply coming here to ask you, with the power of the United States flag, the emblem that floats free over a free country, to help them enforce laws in their own States—bigoted laws that they are unable to enforce to the full extent. That is what they are coming here for, and for no other purpose. They are coming here with the subterfuge of regulating interstate commerce, to help them carry out their local-option and prohibitory laws, and they know that they can not enforce them within the limits of their own State.

I am a layman, and I do not wish to discuss the question in its legal bearing, but I want to say that when a man in one of these prohibition States says, "I want a case of wine, and I will order it from some grower in another State and he will send it to me C. O. D." that is a business transaction privileged under the Constitution and under the right; and if Tom Jones says to his friend Smith, next door, "I am going to order of an Ohio wine grower a case of wine," and Tom Smith says, "Order a case for me at the same time; it will make the transportation cheaper," and three or four of those neighbors get together and each orders a case of wine, and that case or cask or whatever it is comes through the border of the State, do you mean to tell me that that bigoted State authority can confiscate the package and say that you must not distribute it among these owners who are private citizens? That is what I understand this C. O. D. law would mean, Mr. Chairman, and I ask you if the United States, with all its power, with all its glory, is to step in and trample upon the rights of a private citizen, though he may live in a State in which his liberal views are those of the minority?

Mr. Chairman, I do not wish to detain this committee any longer. I only want to say this: I live in New Jersey, I live in Trenton, and

I have the honor to be a member of this alliance, the president of the organization in my own city. I have 39 societies, with a membership of over 1,500, and I voice their sentiments, and I voice the sentiments of all the German-Americans in the State of New Jersey, knowing them to be mine and expressing them correctly. I say to you, gentlemen, that you are a judiciary committee and may perhaps have only the power to judge upon the legal aspects of the bill referred to you. Yours may be only the power to determine whether such a bill would be constitutionally right, and you might have to report this bill if your opinion be that it is legal and constitutionally correct.

If you should come to that conclusion and report the bill from that point of view and find that its constitutionality is such that it will leave you no room except to report it, remember this, however, that when you leave this committee room and go on the floor of the House you will subject yourselves and every other member of this Congress, Senate or House, to the strict scrutiny of very liberal-minded voter, be he Democrat or Republican or over the line, who will think that the passage of this law has affected his rights as an American citizen.

Gentlemen, I thank you for your attention.

Mr. HEXAMER. With your kind permission I will next call on ex-Sheriff Edward J. H. Tamsen, who is now school commissioner.

STATEMENT OF EDWARD J. H. TAMSEN, ESQ., OF NEW YORK.

Mr. TAMSEN. Mr. Chairman and gentlemen of the committee, I did not come here with any prepared speech. I was simply listening to the argument of the honorable leader of the Democratic party on the floor of the House, and I am very sorry, inasmuch as he represents my party, that he is in a wrong position on this question.

I have the honor to represent the National German-American Alliance, of which the gentleman who preceded me is a member and is president in another State. I represent the State of New York. We represent bona fide—not as gentlemen generally come before you that represent so many voters—we really represent 200 associations of the State of New York, with a membership of from forty to fifty thousand voters.

I simply came here instructed by our organizations to enter our most rigid protest against the enactment of this law. Why? The gentleman from Mississippi comes here and asks the interference of the United States Government and of Congress, for what? For a law which they find or claim that they have not sufficient power to carry out and execute in their own State. That is a prohibition State. They have the police power, they have their legislature there enact every law which they possibly could, but there is one thing which they can not touch, and that is the private liberty of every citizen of the United States. Evidently, from just listening to the argument here to-day, I find that there is only one object which they want to accomplish, and that is to prevent the buying by a private citizen for his private use, for his own consumption, of any wine, or beer, or liquor, or whatever it may be.

What does this express company business mean? Mr. Chairman, I understand that the members of this committee, as a rule, are

lawyers and are well versed in the law. We will not touch that point, but here is the merchant, and as such I appear before you, a merchant who has nothing whatever to do either with the express company or any wine, liquor, or other similar express business. The statement which Mr. Williams made may be right, as far as he knows it. The C. O. D. business does not mean the sending and consignment of large lots of merchandise. From my own experience in business it simply means that the small parcels of goods that are sent out are covered by the C. O. D. business. If we get any orders from the interior of the United States to New York and we do not know the parties—I am speaking of other branches of business than the liquor business—we usually send the goods by express, C. O. D.; and the express companies act, in that respect, as agent, and deliver the goods and collect the money.

These gentlemen from Mississippi want to have this law enacted simply because they can not get at the private parties who want to drink their wine and their beer. They can have it sent by an express company and they pay for it. There is a man who is a prohibitionist, and his next neighbor is not. He sees that the law does not prevent the neighbor from getting his wine for his private use if he wants to buy it. He orders a case or two, as we do in New York, too, or a couple of cases often, on the other side, from France, from Italy, or Germany, and we get the goods through the custom-house, and they are sent to us, and sent out to the country and collected for a great many private parties. That is what they are trying to get at, that they shall not have the right any more as private citizens to order anything which they want for their private use. In this respect, gentlemen, without being a lawyer, I claim that that law which infringes upon the personal liberty of an individual citizen will be unconstitutional; and when I say here that is a question for the court to decide, how much expense does that involve, how large a corporation must it be to undertake a suit in the Supreme Court of the United States? Why go to such an extreme expense, when we know beforehand that very likely, if my position is correct, it must be declared unconstitutional?

We are here representing this large part of the voters of the State of New York, and we simply enter our protest against any interference on the part of the United States with any of the local prohibition laws of the States. They have ample power, and they can use their power, and it is not for the United States to help them along. We know, as my predecessor told you, and the experience of all you gentlemen is the same, that you can not prevent the drinking of liquors, beer, or wine, by any laws whatsoever. The only thing that you can do is to regulate it in a common-sense way, and regulate it in such a way as the community asks you to do. I thank you.

STATEMENT OF P. A. WILDERMUTH, ESQ., OF PHILADELPHIA.

MR. WILDERMUTH. Mr. Chairman and gentlemen of the committee, there is one thing that impresses me, that I do not believe has been argued before you, and that is the question of contract. I am of the firm opinion that neither Congress nor a State, nor any legislation, can restrain, hamper, or interfere with a contract entered into

between citizens of two or more States. As an illustration, A, a resident of a prohibition State, sends an order to B, in the State of Illinois, to ship to him one cask of wine C. O. D. B receives this order and he delivers this wine into the possession of a common carrier—a steamboat or an express company or a railroad. They then become the agents of B; and under this bill, where it provides that when that wine enters the boundaries of the State it shall become subject to the laws of that State, it then and there steps in and tries to break that contract between A and B, which neither Congress nor any State has the power to do. That contract is not complete until the delivery to A of that specific article of commerce, whether it is wine, beer, or whisky.

I take the broad view, where a question of this kind is brought up, particularly by people who are hostile to liquor in any shape or form, in answer to the question, "Do we believe in local option?" that just in adverse proportion as a prohibitionist believes in repressing liquor do we oppose local option and prohibition.

Mr. Williams, in his argument, failed to bring out the most essential case on the question of the interference and restriction of a State upon liquor shipped from another State. I refer to the decision of the Supreme Court in the case of *Vance v. Vandercook* (117 U. S., 438-452). No doubt you gentlemen are all familiar with that case, more so than I am.

In bill No. 4072, now before you for consideration—

The CHAIRMAN. You gentlemen are referring to the bill that the committee had here last year. I want to call your attention to the fact that the present bill is No. 3157. There is some little difference between the two.

Mr. ALEXANDER. There is no difference between the Hepburn bill that was introduced in the last Congress and the Hepburn bill introduced in this Congress. The Williams bill is one thing and the Littlefield bill is another and the Hepburn bill is another; but the Hepburn bill that was introduced in the last Congress is the same as the Hepburn bill that was introduced into this Congress.

Mr. PARKER. It is the same as the one reported at the last session.

Mr. ALEXANDER. They are identically the same.

The CHAIRMAN. The bill that you gentlemen refer to is identical with the bill that was introduced at the last session.

Mr. WILDERMUTH. In the bill now before you for consideration there are three cardinal principles in issue which should not be overshadowed by other matter. First, Whom will this bill benefit should it become a law? There are but few States who have prohibitive liquor laws who ask for or desire this legislation, so few that, in comparison, is it right or proper to enact it? It can be of no benefit to any State as a whole, for the manner of its enforcement, both Federal and State, is but conjectural and chaotic. Broadly speaking, I know not in what way any benefit is conferred excepting upon a few salaried professional agitators, who have from time to time demanded and importuned your honorable committee for prohibitive liquor legislation, whose demands upon you for this kind of legislation is insatiate. If you pass this bill it will not be long before another will be presented with the same object in view, to wit, repression and prohibition.

First came the Wilson bill of 1890, then came the abolition of the

bars of the Senate restaurant and of the House restaurant. Following that came the abolition of the canteens of those helpless men who enlisted under the Stars and Stripes, and for what? To favor a few who did not serve the Stars and Stripes, but who served their fanatical ideas, and possibly their pride. Now, they have gone one step further. There has not been much opposition, as I understand, to this bill already passed, on the question of liquor, such as I have named; and they bring this matter now before you, known as the "Hepburn-Dolliver bill." When they get that through, where will they stop, gentlemen, or will they ever stop? They will keep going on until the citizens are bound to come here before you and enter their most strenuous objection to any further liquor laws, and particularly in this attempt to commit the United States Government to prohibition, pure and simple, if this bill becomes a law and the law is sustained by the Supreme Court of the United States.

I am informed that these agitators, who declare that they represent many denominations of religion, have been accused of deliberate misrepresentation and deceit, if not actual fraud, in disseminating their prohibition doctrines, using the frank of members of Congress to that end. Second. Why should this bill become a law? Of the forty-five States comprising our Union there are perhaps five which want this legislation because there remain many citizens of those States who continue to use liquor despite its laws, and practically they ask your assistance to deprive those citizens of the means and opportunity of obtaining any liquor. While the bill purports to protect the citizens in their constitutional right to use liquor, it nevertheless may deprive them of this right if the construction and enforcement of this bill, together with prohibitive State laws, are delegated to and left with the State.

What is to prevent a State, under these conditions, from imposing such restrictions, regulations, and burdensome conditions upon common carriers and others so as to destroy it, as stated in the case of *Vance v. Vandercook Company* (170 U. S., 438-52)? The right of a citizen of one State to import liquor for his own use is assured by the Constitution of the United States and does not rest upon the validity of this bill or any other legislation or the laws and restrictions of any State. This principle was held by the Supreme Court of the United States in the case quoted. If a State is so impotent that it can not enforce its prohibition laws, by what right or reason does it appeal to the Federal Government, where it practically asks all the other States to assist it to enforce a law obnoxious to many of its own citizens within the State?

As a prohibition State law is to-day it has plenary police power over all liquors within the State, sold or for sale, and the proposed legislation can not extend any State power beyond its boundaries or result in anything more than extended litigation. As well ask you to prohibit common carriers from delivering coffee and beef within a State because some of its citizens drink and eat too much of it. Twenty-five years ago legislation of the kind before you would not have been considered. A dangerous precedent may be established, and where will legislation of this kind end?

Third. This bill, if passed, commits the Federal Government to prohibition, which is unwise and unwarranted. Congress has the

sole power over interstate commerce and the necessary regulation thereof, but it has not the power to prohibit, restrain, or hamper a common carrier in its discharge of commercial intercourse between States. Liquor is a taxable and legitimate article of commerce and has always been so recognized by the Federal Government and four-fifths of the States. When a common carrier delivers liquor within a prohibition or other State, it is only after its delivery thus that it should become subject to the State law. If the consignee makes, or attempts to make, any unlawful use of the same, that is wholly a matter for the State, and this bill can not give any State jurisdiction, directly or indirectly, before that time. In attempting to do so it interferes and restrains, it does not regulate, interstate commerce.

The powers which prohibition States hope to have conferred upon them by the bill have already been attempted in South Carolina, where almost similar provisions were enacted by the State, and afterwards such restrictions were added as to virtually destroy it. In this matter the Supreme Court interfered (*Vance v. Vandercook Co.*). In view of the principles held in that case it is my humble opinion that Congress has not the power to delegate its regulation over interstate commerce so that any State has jurisdiction over an article of commerce before its delivery to the consignee.

How can a common carrier know whether the liquor in its possession for transportation is, to use the words of the bill, "bona fide and intended solely for the personal use of the original consignee?" What is to prevent a State from making and enforcing such obnoxious restrictions upon the common carriers so that they would decline to receive liquor for transportation? The views of the Hon. Richard Wayne Parker on this score are worthy of your further consideration, where he says that it makes lawful vexatious restrictions on transportation as to the purpose of each individual shipment in which the burden might be thrown on the consignee of proving that it is for his personal use. To this I desire to add that this burden might also be cast upon the carrier.

The title of the bill, from its probable effect, should read "A bill to restrain liquor, an article of commerce between the several States and with foreign countries in certain cases."

I respectfully submit that this bill is inquisitorial legislation, to be adversely reported.

Mr. TIRRELL. I would like to ask you one question. Is the Hepburn-Dolliver bill any more than this: That each State shall be allowed to enforce its own laws in the regulation of the liquor traffic, and are you opposed to that?

Mr. WILDERMUTH. I am not opposed to a State enforcing its laws, but I am opposed to the Federal Government assisting that State—going out of its way in passing a bill to the effect that it gives that State jurisdiction over a certain prescribed article before it reaches the consignee. There is a vast difference here, as I understand, as to the idea of the mark of delimitation between the State and the Federal statute or Federal laws or Federal powers. My broad contention is that Congress can not confer upon the State any right to take any article of commerce until it reaches the consignee. The burden of proof is not upon the consignee or the consignor. There is a contract between them. They are in different States, and the moment

that liquor, as I said before, crosses over into the State where its sale is prohibited, I say that State, and Congress can not give it the power, and it has no control over that until it reaches the hands of the consignee. Then the State has its officers, and they can enforce its laws. It is not unlawful to use liquor in a prohibition State. Is it unlawful to use liquor in a prohibition State or just to sell it?

Mr. TIRRELL. It is not unlawful to use it, of course.

Mr. WILDERMUTH. Well, I see this bill provides for the use, consumption, and storage. I do not see any difference between the words "use" and "consumption."

Mr. TIRRELL. Then your arguments come right down to a question of law, do they not?

Mr. WILDERMUTH. Yes, sir; this is a question of law and the interpretation of the law, but I do not think that the Federal power can extend within the State, no matter what jugglery of words you may use. You can not prevent that contract between the citizens of those two States, notwithstanding the State law against the use of liquor or its consumption or its storage; but you can, by a State law, prevent the sale of liquor, and that is all any prohibition State can do, is to prevent the sale of liquor, because the right to use liquor does not depend upon an act of Congress or of the State. It rests upon broader ground than that, upon the Constitution of the United States.

Mr. HENRY. Does your argument apply to any article of interstate commerce?

Mr. WILDERMUTH. Every article of interstate commerce, absolutely every article that is legitimate.

Mr. HENRY. Suppose this article of interstate commerce, instead of being intoxicating liquor, should be something that is highly explosive and dangerous or an article of interstate commerce that is noxious and would create disease and pestilence in the State, what about the State taking charge of it when it reaches its State line?

Mr. WILDERMUTH. The State has plenary police power to seize adulterated goods, where they are against public health, or goods that are dangerous to public life or in danger of destroying property, but liquor is not dynamite, pestilence, and disease.

Mr. HENRY. Did not Judge Fuller, in delivering the opinion in the Rohrer case (140 U. S.), base it strictly and solely on the ground that the State was authorized to exercise its police power; that it was a police regulation, strictly, in regard to liquor?

Mr. WILDERMUTH. Yes, sir.

Mr. HENRY. Therefore putting it on the same basis as explosive articles or articles dangerous to the health of the people, and so forth?

Mr. WILDERMUTH. That is very true; but that is not relevant to the question here.

Mr. HENRY. It seems to me that it is very pertinent.

Mr. WILDERMUTH. There is a vast difference between dynamite and liquor. The question before us, I have to say, sir, is that of liquor.

Mr. BRANTLEY. You made a distinction between what is a legitimate object of commerce and what is not?

Mr. WILDERMUTH. Yes. I do not wish to be understood by Mr. Henry in this matter, and I do not say, as a broad proposition of law, that Congress has not the right to regulate commerce between the States and foreign countries; but I do most emphatically assert

that Congress can not place liquor on a par with dynamite, and can not place liquor on a par with pestilence or disease. Those are entirely within the organic act of every State and Territory to control, and they hardly need the assistance of Congress.

Mr. HENRY. Understand me, I would not have Congress say that at all. I would not have Congress to legislate in that direction, but would we not rather be leaving it to the States to say what is dangerous to their public health and safety, and so forth, in the exercise of their police powers and let Congress take its hands off of the matter?

Mr. WILDERMUTH. I can see the line of your reasoning.

Mr. BRANTLEY. I would like to ask if Congress would not have to take its hands off still further and refuse to collect taxes for the sale of liquor? If Congress is going to recognize that it is a legitimate business, and people can pay taxes and engage in it, can Congress delegate to the States the power or take its hands off so that the States can declare that which Congress has said is legitimate business is not a legitimate business—that is, that the State could contradict or act in conflict with and do away with the act of Congress itself?

Mr. WILDERMUTH. Well, a State has full power over liquor, and if Congress does not exercise its right or the Federal Government does not exercise its right of taxing, of course, there is a dual question there. The United States Government will issue a license for the sale of liquor and the State will also issue a license for the sale of liquor.

Mr. BRANTLEY. The United States does not issue a license; they collect a tax.

Mr. WILDERMUTH. Yes; I should say it is a tax. So that there is a dual question there. It is the same as our citizenship: We may be citizens of the United States and yet not citizens of the State of New York. In other words, I am a citizen of Pennsylvania and not a citizen of New York, and I am also a citizen of the United States; and so it is with this taxable commodity—liquor. I can readily understand the line of your reasoning, Mr. Henry. Here is dynamite or any high explosive, and a State would be powerless to prevent a railroad from bringing that commodity through its territory or storing it there. To prevent companies or corporations from transporting high explosives they had to appeal to Congress to pass an act covering or controlling the shipment. But I hope, gentlemen, that you do not take that view that dynamite and liquor are synonymous. [Laughter.]

STATEMENT OF DR. GEORGE RICHTER, OF ST. LOUIS.

Mr. RICHTER. Mr. Chairman and gentlemen, the Missouri branch of the National German-American Alliance asks your permission to state its views of the bill under consideration.

Our Missouri society has more than 75,000 members, all of them United States citizens and intelligent voters. We combined only a few years ago, and our object is to promulgate the ideal principles of the Constitution of this country among immigrants, to aid them in their endeavor to become useful members of the community; to

uphold the memory of your and our ancestors, of whom we are justly proud; to conserve closely the enforcement of all laws in harmony with our obligations as law-abiding citizens, but also to oppose any and all attacks upon the noble, time-honored institutions of a Republic which guarantees certain rights to every being within its domain.

A large number of our members—I among them—had studied the conditions of the “civilized” nations and had recognized the superiority of America in all governmental matters; the most important to us being that liberty which alone can conduce to the happiness of intelligent and intellectual people. Thus impressed, we decided to bring here our fortunes, our youthful energies, and our conscientious enthusiasm.

We applied for citizenship. It was granted us under an obligation to uphold the principles of this Government.

Since that time we have lived here with you and have been part of you. Our children were born here; we and they have shed blood to uphold the Union. We have worked jointly for the common weal. We have done our share in developing the resources of America. We have contributed our modest share to the wealth and glory of this new and beloved fatherland in field, in factory, in college, and in court.

I ask you to note, too, that our ideals have not led us to the amassing of immense individual fortunes, but have found realization in making happy and being happy and in directing our lives along the lines of modest desires.

Not the accident of birth, but the exercise of an earnest thought and a free choice made us American citizens, glorying in the greatness of this nation and in its proud rank among civilized nations of the world.

How seriously all of us take our duty you may conclude from the fact that all of our workers in this alliance are volunteers; that not one draws a salary beyond mere office expenses; that we meet all expenses by a per capita tax of 2 cents per annum.

We are at all times mindful of our duties as citizens, and we guard our rights with equal jealousy.

We recognize in the bill before you an attack against the very spirit of that Constitution which has prompted us to apply for citizenship and to continue under the flag of this Republic as its most ardent defenders. This and previous attempts to destroy by legislation the freedom of the individual in his innocent enjoyment of life have had for their covert purpose a paternalism worse by far than the most hateful absolutism of Asiatic tyrants.

Our alliance does not represent any political party. It will never enter into party politics, for our constitution expressly forbids it. When we appear before you here, therefore, it is not to aid or oppose any political party. All we ask is to be heard in a matter which we believe concerns every citizen, irrespective of his political views.

There is no gainsaying that the measures under discussion aim at the accomplishment of what is popularly termed prohibition. The advocates of prohibition we believe to be generally sincere in that they seek to better the condition of the masses. They claim that alcoholic drinks lead to all kinds of excesses, fill hospitals, asylums, and poorhouses, and tend to ruin family life.

But in their zeal they disregard private rights, the sanctity of the family life, the liberty guaranteed by law; in fact, they are deterred by no consideration of their neighbor's freedom or property. They are running amuck.

Their assertions as to the danger lurking in all beverages into which alcohol enters have been repeated myriad times without serious contradiction, because the sober masses who temperately enjoy life's pleasures looked at the dispute as if it were only a passing fad. But, finally, many people are inclined to believe false representations repeated so often, and it has come to pass that defense of views not in accord with prohibition doctrine is sneered at. Such defense is considered as coming from parties interested financially, and consequently not entitled to much credit.

Our American alliance is absolutely regardless of the interests of distillers and brewers and independent of both. Our principles are based upon the welfare of our families and that of our friends. We have no professionals in our employ to lecture or preach. We of the masses command no capital other than a wealth of love for our fellow-citizens and a desire to serve them in the name of a healthy liberty. No private business, no political party, no church is taxed by us.

Prohibition has no place in any creed, with the one exception of Mohammedanism. Why, then, should it awaken such a fanatic spirit in the bosoms of so many people?

How can Prohibitionists, for instance, claim that alcohol in any and all quantity shortens life?

I know of no better authority from which to refute such an audacious assertion than the United States census of the year 1900, a work certainly not compiled by alcoholics or influenced by the liquor trade.

There you will find on page cclx of Volume III the death rate:

	Per 10,000.
All occupations.....	15. 0
Clergymen	23. 5
Saloon keepers, liquor dealers, bartenders, and restaurant keepers.....	13. 3

In these figures the census emphatically contradicts the not always trustworthy statements of life insurance companies. It is, however, more than possible that in case of a saloon man's death alcoholism is registered as a matter of course, while a more careful diagnosis is made for other people. Death due to alcoholism directly is quite rare, but where a person has been known to "indulge," the few less conscientious practitioners jump at conclusions. It is even so with statistics concerning asylums. As long as superintendents of such institutions are known to jump at conclusions, their statistics are just as futile.

Now, if we would imitate the reckless example of our reverend adversaries, we might proclaim that total abstinence shortens life! For clearly there are more habitual drinkers among the saloon men than among the clergy—begging their pardon.

The remarkable but undeniable fact that the expectation of life is so favorable to the dealers in alcoholic beverages should not either be attributed to the theory that their constitution becomes injured to alcohol. I refrain from dwelling on this point, but will only suggest

that the ladies and gentlemen who are so impatient of all argument against prohibition might prepare a bill providing that this and some other pages be torn from the official census report.

The fact just mentioned, the experience of the world's history, daily observation which is not distorted by preconceived notions teach that where people have at all times free access to even the strongest drinks they will not become drunkards. When there was no such tax on whisky as now, when a few cents would buy more than an average man could stand, there was not more, but probably much less drunkenness than there is now, even in the so-called prohibition States. I know this can not be proven by statistics. But I know it is the opinion of reliable observers. And as we are the descendants of people of those days, it would be a queer argument to insist upon the presumption that the habitual use of alcoholic beverages was the cause of degeneration in descendants. Or is this present crusade against the joys of life in every respect, perhaps, a symptom of degeneration?

If on every street corner in what I beg to be permitted to call a free State there was to be had, free of all expense, an unlimited amount of good liquor, how very few people would partake of it at all, and how little difference, if any, it would make in the morals of the populace? If, on the other hand, the same thing were to-day attempted in a prohibition State, picture the result for yourself!

I appeal to everyone's personal experience. There is no doubt that to-day the majority of our fellow-citizens has not only the means, but also the taste, or call it a habit, for an occasional drink. Now, consider the very small fraction of a percentage of people who can not control their appetites—I mean in the free States!

And who are the immoderate? Only such as have lived under coercion or who are abnormally constituted. The former are victims of most unwise laws, the latter can never be cured by any kind of a law. Only patient education can accomplish anything with them. Wanton force provokes reckless transgressions. It is a great pity that the experience with military canteens can not be cited in proof of this, for where the mind is guided by preconceived ideas even the plainest facts are ignored.

They are no mean authorities who say human nature demands more than plain food. It demands occasionally some stimulant. Prohibitionists do not deny it. They do not object to coffee, tea, or strong spices in their food, though all these, if taken in excess, are quite harmful. Why have they singled out alcohol for their pet aversion?

Alcohol is present everywhere. The most passionate Prohibitionist can not avoid it. Fresh bread contains 1 per cent alcohol, or more. We eat starchy food, flour in many shapes, sugar, sweet fruits, and the like. What becomes of it in normal digestion? Part of it is separated into carbonic acid and alcohol. A considerable amount of alcohol is created in our digestion and makes us sleepy after meals. No wonder that many ladies, who delight in candies and sweetmeats, do not care for more alcohol. They have already eaten an abundance of it. An additional amount would sicken them.

There is alcohol in the atmosphere. Thousands of tons escape into the atmosphere from the bakeries every day, for the fermentation

of the dough generates alcohol, and one might aptly say a bakery is virtually a distillery in which the larger amount of alcohol is wasted, while we save the swills for daily food.

If it is actually impossible to escape from alcohol in our daily, sober life, how very foolish to call it a poison under all circumstances. Nobody denies that excess in the use is harmful. Hydrochloric (muriatic) acid concentrated is certainly one of the strongest caustic poisons. But in great dilution, say, 0.1 per cent, it is a normal constituent of the gastric juice. Without this so-called poison we can not digest meat or eggs. Its absence hastens the death of those suffering from cancer of the stomach.

Excesses are harmful, but what incites excesses? A craving due to denial, followed by an opportunity for satisfaction. It is the same with all kinds of luxuries and enjoyments. The first opportunity betrays one into overindulgence. A sound policy will not absolutely forbid harmless enjoyments. It must render them eventually harmful.

The much abused and frequently ridiculed term "personal liberty," incensing phrase to those who would exercise a foolish paternalism by general coercion, means the freedom to act, to live, and enjoy life at one's own pleasure, as demanded by the plainest common sense and guaranteed by the Constitution, with the one restriction that the acts of the individual shall not interfere with the same rights possessed by everybody else. As soon as the exercise of my personal rights endangers any one of my neighbors, then the community has a duty to enforce a restriction. Such restriction must, however, never abrogate the fundamental principles of personal liberty. It is a deplorable fact and a sad commentary on our tendency that fair-minded American citizens can to-day laugh at the words "personal liberty."

Police laws endow the authorities with ample power to prevent harm being done to our neighbors or to ourselves. Such laws should be enforced firmly. A bad example set by a drunkard is easily cared for under the law; but does it stand to reason that because a very few people can not control themselves, all the rest of mankind must be enslaved? Because some people steal or take undue advantage in business dealing, shall all right on property and all business methods be abolished? Because some marriages prove to be unhappy, shall all marriages be annulled? Because one or two shepherds have been black sheep themselves, shall the practice of religion be declared illegal?

The arguments of the Prohibitionists are in this respect worse than illogical. They are sheer nonsense, unworthy of rational minds.

Excess in concentration means the indiscriminate use of whisky, or brandy, or rum. Strong liquors are not only a most useful and beneficial medicine, but often a boon to the exhausted. An occasional swallow of liquor has been declared by no less an authority than Doctor Wiley, of the Agricultural Department, as harmless to the average man. As to wine, the history of civilization, the poetry of all times and all nations bear witness.

An intermediate between stimulant and food is the ordinary beer. It is both, or either at the same time. People advocating—not temperance, for every sane person advocates temperance—but prohibi-

tion, make it their point to ridicule beer. They do not know whereof they speak. The average beer contains an average of 3.5 per cent alcohol, against about 10 per cent in wine and 50 per cent in whisky and patent medicines. But beer contains, besides, large percentages of sugar, proteids, nourishing salts, and extractives; I shall not tire you with repeating analyses published many times. Such substances are present only in traces in the other alcoholic beverages, while in beer they establish a decided nourishing value.

True, he who drinks large quantities of beer at a time will have taken an absolutely larger amount of alcohol than others in a relatively small amount of whisky. But even there is given an illustration of the difference in concentration. The same amount of alcohol greatly diluted has not nearly such an intoxicating effect as when concentrated. Just so, as stated before, concentrated muriatic acid, even in small doses, is a most vigorous poison, while a larger quantity in great dilution is a normal constituent of the stomach.

The amount of alcohol consumed by the average beer drinker is known to be harmless. Excesses in beer rarely produce effects similar to those of smaller excesses in whisky. Nations with whom beer is the national beverage are known to be healthier than those who drink the strongest liquors only. It is true that drinking, even of beer, during working hours lessens the efficiency of the laborer. It is good policy not to permit the use of stimulants during work. But this rule does not apply with eating. The dyspeptic condition which afflicts certain people is not due to the small drink they may have been taking, but to the haste with which meals are eaten at lunch time. The coffee or tea drinker is not a whit better off than the user of other stimulants. He is even more apt to become dyspeptic, as coffee and tea are nerve stimulants pure and simple, without any of the other virtues contained in beer. This, I recognize, needs an explanation.

It is universally known that beer passes rapidly through the system. What little alcohol it contains is soon split up. There is a striking analogy between blood and beer in a chemical as well as in a physical sense. At the beginning of digestion beer becomes isotonic with blood, whereby it becomes the most wholesome of all beverages. Even when taken immoderately it will pass through the body faster than any other liquid, thereby flushing the system effectually. Under certain conditions beer is preferable to coffee, tea, lemonade, and even water. Skimmed milk would be superior if it would stimulate (as may be indicated) and if it possessed "keeping" qualities. These it has not. It is liable to spread infectious diseases. Beer, on the contrary, is not only aseptic, having been sterilized in its manufacture by boiling, but it is directly antiseptic. The typhoid bacilli and the cholera vibrio are killed by beer in a few minutes. The same may be said of liquors, but they do not serve to quench the thirst.

All of these statements are contradictory to the report of a number of physicians of the city of Toledo, which has been circulated under the frank of Senator Gallinger. I fail to find among the names given there anyone known well beyond the limits of their town, or anyone who has made his mark in scientific literature. But granted that their opinion corresponds exactly to their experience, or to their conception of facts, it is to be remembered that the ex-

perience of a few practitioners must be necessarily limited and could not compare with such immense statistics as those represented by the United States census. The latter is certainly not biased.

There was a time in this country—it was about one hundred years ago—when temperance societies were formed which worked for the substitution of beer for rum. Long before that the New England colonies were founded. Their clergy did not object to alcoholic stimulants, however pious they were. It is certainly right to caution the inexperienced against the dangers lurking in the reckless consumption of alcohol. But Prohibitionist friends are not content to stop there. They go further and attack the innocent pleasures of the people and the recreation of the masses. They want to make the transportation of beer, of the least harmful of all beverages, impossible. They would know, if they cared to listen to arguments, that evils are intensified thereby. Forbidding what is harmless leads perverse men to seek what is harmful, regardless of price. Patent medicines, wood alcohol, dope in any form is procured. Men become fiends, honest people break the unwise laws, passions overpower the weak. Crazy from drink! Who is it? He who suddenly gets hold of what had been denied him for too long a time.

But acts of violence are not the only crimes that disgrace our civilization. Crimes also occur among total abstainers.

There are some more subtle and not less revolting—those perpetrated by strictly sober individuals, like forgery, fraud, commercial tricks which amass, unlawfully, immense fortunes by frenzied financial manipulations. Yea, there is no lack even of acts of extremest violence done to honest people by fanatics who destroy the property of their opponents with hatchet and dynamite.

We oppose openly all measures which interfere with the peace of the people and the happiness of the home by introducing hypocrisy as a factor in daily life. Making hypocrites out of those whose motto was fair play, is corrupting the very genius of America.

The measure before you must result in such a condition. Forbid the milder stimulant—it is too bulky for clandestine transportation, for smuggling—and only the strongest liquors will be procured in spite of the most draconic laws. And why all this? I believe I see the cloven foot under the garb of artificial and officious morality. The measure is vitally antagonistic to a very large and important class of citizens, whose modest enjoyments of life are as a thorn in the eyes of some: Those who have sought and found shelter here from oppression by state and pulpit in Europe, and have devoted their unbounded idealism and all their not mean abilities gratefully to this Republic, who have proven to be fully equal in patriotism to those who have landed here but a few years before us. Or why should it be said, as it is said, "They are the Germans, the Dutchmen, who oppose prohibition." Here we are Americans, who uphold and have always upheld the flag of this country, and who are ready to die for it. We have sworn to the Constitution. We are also proud that we hail from another civilized country which has done its share in the world's progress.

Our nonpolitical, but humanitarian, alliance counts in America over half a million members, though established only about six years. We are all honest citizens and voters. We appeal to your patriotism

in this matter. Your wisdom will find its reward at the polls. For we shall never forget those who have proven that they have the welfare of all good citizens equally at heart and not only the whims of a coterie of imitation reformers. America for the Americans; for liberal and fair-minded women and men.

DR. GEO. RICHTER.

MR. TIRRELL. Will you please inform us if you obtained your figures in regard to mortality from the statistics of any life insurance company?

MR. RICHTER. I obtained them from the United States census. I have the volume here. The statistics of life insurance companies I do not in any respect consider final, whether they be financial or vital statistics.

MR. TIRRELL. What is the volume and what is the page of the census report?

MR. RICHTER. It is volume 3, page 260.

STATEMENT OF HENRY DETREUX, ESQ., OF PHILADELPHIA.

MR. DETREUX. Mr. Chairman and gentlemen of the committee, I will not venture on the field that has been touched upon by some of the speakers, and I will also not venture to state here how large a quantity it takes to get up a good argument. [Laughter.] But I will say that I am glad that I have come here to listen to those arguments. We are here as representatives of a class of American citizens that have taken no small part in the building up and development of this country, and who were always ready to fall in line when the country called, and I dare say that we will always be ready again when the country will need our support.

I have the honor to be president of an organization composed of over 30 societies, and I am an honorary director of just as many societies. I am also the vice-president of the Philadelphia branch of this German-American alliance, and I dare say that our people are opposed to prohibition in any shape or form. They regret to see the conditions as they are in this country that lead to so many misunderstandings between the different classes of people. They feel sorry for those that have been led astray by specious arguments; for those that have been led to the path that leads to the destruction of all love for law. I regret very much that there are men of high standing, that there are men among our great men that have been misled by false arguments. The history of prohibition shows clearly that it does not prohibit the use of intoxicating liquors, but tends to introduce them in their more obnoxious and dangerous forms.

This question will be discussed, it will be debated, and the problem that lies therein will remain unsolved for ages to come; and yet we see people come around here every time Congress meets to attempt to solve this problem in their own small, crude way; and if they should be successful in this instance, who would suffer the most? Those that obey the law; and those that would be among the first to obey the law; and among those are the Germans, the German-Americans, and Americans by the millions that sympathize with our views. If this bill should be successful those people would obey the

law. Yes; they would obey the law, but they would not forget those that would be the perpetrators of such an act of tyranny.

You may listen to the best arguments in favor of the bill, you may hear the finest eloquence, and you may say they try to put the stamp of sincerity upon their words, but they will never convince fair-minded American citizens of the virtue of prohibition, no matter in what shape or form it is proposed. If we use the Government of the United States to help to foster the pet ideas of those people, what will become of the United States? If our people will bear this burden for any length of time they will surely not forget those that are back of it, and helped to pass this bill, and helped to put this load upon their shoulders.

I have left my place of business behind, and I must soon depart, and therefore I must cut my remarks short. Eventually this legislation will tend to get the Government of the United States into trouble with the single States; and if it comes so far that the people become aroused in general, and the party that I love so much will suffer, then I will say: "I was not one of them that helped to do it."

Gentlemen, I can not really understand how an enlightened body like the Congress of the United States can give way so far to a single class of people and set aside the rights of a large majority for the sake of pleasing a small minority; and if this bill becomes a law, as I said before, then you will have given away the rights of the single citizens of the United States. And I entreat you, gentlemen, not to give your consent to such an act, to such a measure, that will have the most evil results in the future.

STATEMENT OF NOAH GUTER, ESQ., OF NEWARK, N. J.

Mr. GUTER. Mr. Chairman and members of the committee, I had the honor to appear before you last year on the same bill which is up for discussion to-day. I come here to enter the protest of the liberal people of the city of Newark, a busy, liberty-loving class of citizens that have nothing that they love more than their liberty. It is not a question with the people of the city of Newark that I represent of the transportation of liquor or anything of that kind. It is the principle that is involved in the legislation represented by the so-called Dolliver bill. We do not believe that there should be such legislation as to prohibit the citizens of this great country—in one part of it—from having something which those in the other part can enjoy; and we do not believe that if a law is a good law it should be passed for one part of this great country and not affect the other part of the country.

We believe when we vote for our Congressman that he comes here to make laws for all the people of this great country and not for a part of them. That is the principle that is involved for us in this bill, and I come here again before you to protest against such legislation. We believe that if the bill is good and should be passed that it should be passed for the whole country, and if it is no good for most of the country, then it is not good for the few States that it is asked for.

STATEMENT OF WILLIAM F. REMPPIS, ESQ.

Mr. REMPPIS. Mr. Chairman and gentlemen of the committee, I believe you must be rather tired listening to speeches, and I know when you hear a succession of them it becomes monotonous. I did not know that I was to address you until a few minutes ago.

I am not a lawyer, and I know and feel that you know all about the law points. I am simply a business man. I employ several hundred people, and I have been a temperance man all my life. I like to see the cause of temperance advanced, but I do not believe that it can be advanced by compulsion. I never did believe that. I have never seen it advanced in that way. I believe the only way to advance it is by education. When you try to compel a man to be good you usually do not have very encouraging results.

There is no evil in liquor properly used. The evil is with the consumer who abuses it, and every State can make laws to prevent, as far as possible, its own citizens from hurting themselves in that manner, but it does not need the United States Congress to interfere with the constitutional rights of a citizen.

It is my opinion, gentlemen, from what I have heard here that this bill is not quite sincere. I say this without meaning any reflection, but the Hon. Mr. Williams himself stated that there is one express company that has already given up taking goods of that character into that State voluntarily. The apparent object of this bill is to regulate, but, as a matter of fact, it means to prevent the sale and the use of these liquors; and that I do not believe there is any constitutional reason nor any constitutional right to do. I think when regulation goes to that point it is no more regulation, but it simply means prevention, and it appears to me that this bill by a roundabout way tries to discourage, or rather prohibit, their own citizens as well as the carrying companies by hampering them in such a manner that they will positively refuse to carry those goods; that seems to be the object.

I have the highest regard for any man that does not drink. That is his own right, and I admire him for it. In my own business I give temperance people always the preference, but I do not mean to say that I give preference to prohibitionists, because I like to have people with sane and reasonable views in my business, as I like to meet them anywhere else. There are very sane people and very sincere people in the ranks of the prohibitionists, but it is my opinion that their views are not well balanced and are not broad or in conformity with the liberal spirit of this country. Of course they may have a different view. We all have a right to our own opinions. It has been stated that the State has the right to regulate. Certainly. Nobody denies that. You are trying, or this bill tries, to cut out one article—liquor.

I see no reason, if you once want to make laws of that kind, why you do not cut out other articles, patent medicines, which are much more dangerous, and which usually go into the stomachs of weak women who can least afford to have that kind of concoctions in them. And I also know that whisky, which I abhor, and other stimulants, alcohol and whisky, in prohibition States are about the worst that you can get anywhere. You may as well bring in a bill to prevent the sale of

patent medicines, or to go further and prevent the sale of medical appliances which are used to commit race suicide. You will find lots of things which you can prohibit on the ground which has been mentioned by Mr. Williams that it would be for the public good and morality. The public good and morality largely rests in the hands of the citizens themselves.

This is the broad ground which I take, and I do not believe that Congress should be a party to or countenance prohibition, which it undoubtedly, in my opinion, would do by the passage of this bill. I do not think that Congress ought to array themselves on the side of any one State or any one party, and certainly it should not interfere with the constitutional rights of the citizens.

In my opinion this bill is aimed to prevent the people of that State, who wish to use liquor, from using it, by surrounding the getting of liquors with such obstacles as to positively make it prohibitive to get them. The only thing they have to do is to use the power which will be given to them under this statute in such a manner as to have the transportation companies simply refuse to accept liquors in any kind of package, and that seems to me to be one of the intents. I may impute improper motives to them, but that is the way it appears to me. Nowadays we look at some things that aim at our personal rights with some suspicion. But if that is not meant, put the bill in such shape that it can not be misunderstood, so that the power which you put in the State or give to the State authorities can not be abused.

If Mr. Williams is such an unholder of State rights, why call in the United States Congress? I come from the county of Berks, in Pennsylvania, which is called the Gibraltar of Democracy in our State; and in the opposition to this measure I have behind me not only the 1,200 members of our organization, but, I may say, 99 per cent of the population of that part of the country of Berks County Democrats and Republicans alike. We stand united in opposition to this measure.

It seems a trifling measure, but to us it means more. It means an interference with our constitutional rights, which we do not think is warranted. We think that this bill is not necessary, that it is uncalled for, vicious, and should not be passed; and, I trust, gentlemen, that your good sense may not allow it to be recommended.

STATEMENT OF MRS. FERNANDE RICHTER, OF ST. LOUIS, MO.

Mrs. RICHTER. Mr. Chairman and gentlemen of the committee, two years ago I had the honor to appear before your honorable body in behalf of this same cause. I am glad to state that I have not changed my opinion, and I therefore speak from the same point of view. Just as I did then, I represent to-day those women of the United States who dare to have their own opinion in a matter which has hitherto been monopolized by a certain class of women who pride themselves that they voice the sentiments of all their sisters. This is especially true concerning those 10,000 women of Missouri who joined in the protest against Governor Folk's definition of Sunday as a general day of rest—a protest which was issued some time ago by the Missouri branch of the National German-American Alliance.

Why did these women, mostly wives and mothers, from all classes of our population, who rarely trouble themselves with affairs outside their homes and family circles, declare themselves for a so-called open Sunday—plainly spoken, for the open saloon on Sunday?

They do not frequent saloons, and, according to the opinion of some women, they should be glad that the law, at least for one day of the week, keeps the male members of their families out of such a dangerous place.

They became interested, notwithstanding their general aversion to "woman in politics," in such public affairs as affected their home life, in arguments pro and contra prohibition, and even in such a nasty thing as the so-called "liquor question."

They began to look around, and they saw that this Sunday law, which proclaimed with a loud and pious voice the welfare of the people, led just to the opposite direction—to degradation—just as all the laws do that would enforce prohibition.

Prohibition affects the middle classes only. It has nothing to do with the very poor; it does not disturb the very rich; but it degrades the working classes—the bone and sinew of a nation—morally and physically.

Prohibition takes away their recreations and degrades them to the condition of a working machine.

Prohibition loosens the bonds of family life. Prohibition undermines a wise education.

Let me explain these seemingly paradoxical assertions.

We all know that a joy of living, that an appreciation of the good things the world has bestowed upon us, that innocent pleasures, that merry laughter, and all wholesome recreations are weighty factors in human life. A man who has been working hard all day, no matter what his profession or trade, finds recreation in meeting his friends and congenial company after working hours. A woman who has been drudging all day in her household and with her children has also the same appreciation of recreation and the right to enjoy it.

Prohibition not only forbids this, but it drives men and women into separate clubs to find separate enjoyments. One of the main interests of mothers and wives lies in sharing the diversions of men. The experience of centuries has proved that wherever families jointly frequent public places—where they meet good company—and where light drinks are served and good music is rendered, the moral standard has been the highest and comparative happiness has prevailed. As man and wife should work and strive in good fellowship for their own and their children's happiness, so they should be the same good comrades in the hour of recreation and not separate into different groups or clubs. The presence of good women always refines the thought and conduct of men, and in their presence men refrain from all kinds of excesses.

Prohibition abolishes all the innocent enjoyments of summer gardens and like places of amusement. It banishes the light drinks from home tables and substitutes a stolen sip of something strong in the closet or under the straw in the barn.

Believe me, in that household where beer or wine is found on the table, subject to modest use, children never think of craving for it. They will partake of the little that is given to them as naturally as

they eat an apple or a piece of candy and it will be nothing strange or exciting for them when they taste it for the first time as half-grown boys and girls. It will not be the forbidden fruit. And you know how dangerously sweet that tastes.

I never saw so many boys drunk and noisy on the streets in our quiet neighborhood in St. Louis as since the enforcement of the Sunday law. And I know of many a workingman, who seldom visited a saloon on a Sunday, who spends his money now in those readily organized clubs just for the fun of circumventing the law. There they drink to excess because the beer barrel or the whisky jug must be emptied at a certain time, under the fear of police interference. They were formerly satisfied with a glass or two of beer or wine at the saloon or with that little amount they brought home for the whole family. It has been represented that a convenient or subservient police record showed that crimes were lessened through the enforcement of the Sunday law. They indicated a smaller Monday docket, but they did not explain why the docket on Tuesdays was so much larger. And the statistics of our hospitals show an increase of cases of alcoholism by 100 per cent and more. People will get a bottle of whisky more easily than a can of beer. Yet this is only the result of the closed Sunday. We see the glaring effects of prohibition in the conditions that prevail in the prohibition States and in the disgusting results that followed the abolition of the canteen.

All men worthy of the name of men revolt at an attempt to regulate their moral conduct by law, and where it is attempted they will break the laws or evade them through means which are unworthy and often childish. Those well-meaning extremists—the prohibitionists—can not change human nature; and if they had studied the art and science of pedagogy they would understand that plain interdiction is as useless as it is unwise. Make a child understand, place the weight of its own responsibility on its young shoulders, and you will have better results than by interdiction. The same principle goes from childhood through manhood and womanhood. You can not form a strong character if you do not show the boy or girl where strength is needed in the emergencies of life. You can not expect to stamp out crime by removing all possibilities of crime as you might take a plaything out of a child's hand. Laws endeavor to define right and wrong. They punish transgressions. But it is not law, it is education, which reduces crime. The mailed hand rules slaves. Coercion can not enforce morality. Only education can do it. And only experience can strengthen our conception of the differences between right and wrong. For what is right or wrong in one instance is not so always. What is good or bad for one person in one single case must not be the standard for all in every case.

Our antagonists see the bad effects strong drinks have on some weak characters and they conclude that they must be bad for everyone. They know that overindulgence in drink has destroyed the happiness of family life in some cases, and they reason that to partake of beer and wine at any family table must necessarily produce the same effect. With the unreason of a stampeded herd they run and do not look right or left, as soon as they hear the word liquor, and yet they accustom themselves very readily to social practices to which moderate drinking can not compare for evil effects.

Do not attempt in these days of progress to regulate the habits of men through laws. You might as well return to the old sumptuary laws prescribing the row of buttons on our coats or the form of our shoes. Instead of trying to educate the criminal you should return to the cure of the whipping-post or the scold's pillory.

But all this, gentlemen, has been repeated to you over and over. I need not dwell on it any longer. Nor need I, a woman, remind you of the financial side of the question nor of the lack of wisdom in making laws which will not be kept even by the Government itself, or of the wrong-doing in attacking, through administrative measures, rights guaranteed by the Constitution that was made possible only through these same rights, or of the inevitable corruption of the magistrates and officers by bribery in the prohibition States and the flagrant contradiction of having licenses issued there by the Federal Government.

I am sent here to plead before your honorable body against all laws that will advance prohibition, by thousands of women who protest against the assertions of the Women's Christian Temperance Union. We will not be ruled by a minority of women, who regard these questions from a very narrow viewpoint, as, for instance, is illustrated by such queer remarks as uttered lately at a women's convention in Detroit, that prohibition would put a sudden stop to the much-ventilated practice of race suicide.

The suggestion of the learned lady throws a disagreeable light on the habits of many families which the prohibitionists generally claim as their followers, and the children in those grow up strong and healthy, despite, or perhaps because, the mother while nursing the infant gathers strength through moderately partaking of good malted beer instead of weak teas and patent medicines, which, as is known, contain more alcohol than ordinary whisky and are taken by the tumblerful, while partaking of beer or other light drinks in moderate quantities has surely not produced race suicide among our German population.

The members of the W. C. T. U. may mean well, but their work and influence is not always to the benefit of those whom they would protect. During the discussions about the military canteen at the convention of military surgeons a well-known physician made the remark that no steps taken would be of any effect if they did not have the president of the W. C. T. U. on their side. This is surely very complimentary, even if meant as a joke.

If an organization of women may be deemed so powerful that even experts of the Government must despair of having sound laws made against their pleasure, then, indeed, we other women have a right—nay, a duty—to step forth in the interest of good sense, liberty of the family, and the right to enjoy life after our own modest and decent ideas. The pleading of women finds its greatest help in the natural politeness of men, and chivalrous men only too often act against the clear and plain interest of the people at large by civility to the importuning of such women, who claim politeness as a privilege superseding right. But complying with their wishes, gentlemen, would be slighting ours.

We are for true temperance as heartily as they are. Therefore we are against prohibition which will not lessen intemperance but increase it by furthering that most contemptible of vices, hypocrisy,

causing people to do secretly that which through law they are forced to condemn. We women have not the privilege of voting, but we claim the right to be heard when our family life is concerned. We give to the State our best resources—our children. And we claim the right to so educate them that they become true citizens and liberal-minded men and women. Therefore we protest against the making of laws which are in direct opposition to a wise education, to the happiness of our home life, and to true temperance.

Therefore we protest against the wide-spreading moral evil—prohibition!

Mr. ALEXANDER. Madam, you spoke of the police-court calendar being larger on Tuesday morning than on Monday morning, now that the Sunday-closing law in St. Louis is enforced?

Mrs. RICHTER. Yes, sir.

Mr. ALEXANDER. Why is that?

Mrs. RICHTER. They are held for the chief on Mondays and put on the outside docket, so that they lessen the Monday docket, and they can say: "On the Monday docket! We do not have so many prisoners on Sunday."

Mr. ALEXANDER. Then it is a trick?

Mrs. RICHTER. Yes, sir; it is a plain trick. [Laughter.]

STATEMENT OF DR. VICTOR LESER, OF PHILADELPHIA, PA.

Mr. LESER. Mr. Chairman and gentlemen of the committee, the National German-American Alliance consists of 1,500,000 voters. I am one of them, and I am a physician.

Alcohol is not only a stimulant to the forces of life, but also a food, and is used as such in prolonged fevers, tiding the patient over the crisis of the disease.

The procuring of good liquor often means life or death to the sick and to the convalescents.

The proposed act will stimulate the pernicious traffic in patent medicines which are mostly fusel oil and alcoholic solutions, with more or less harmful additions.

Furthermore, this act commits the United States Government to the policy of prohibition and holds up our country, which we love and esteem, to the ridicule of the rest of the world, as all who have traveled abroad can bear witness.

All excesses are vicious and dangerous. Prohibition is just as much an excess in the one direction as drunkenness is in the other direction. This bill, if it becomes a law, puts a premium on vice, as it makes it profitable to smuggle and gives new life to the moonshine industry.

Good laws are cheerfully obeyed. This would be a bad one.

STATEMENT OF J. B. MAYER, ESQ., OF PHILADELPHIA, PA.

Mr. MAYER. Mr. Chairman and gentlemen of the committee, I am the secretary of the German Society of Pennsylvania, the oldest charitable society in the United States, which was founded in 1764, so that, you see, it is older than the United States. Our membership is about 1,200, but among them are about a dozen societies, each of them again with a membership of about 1,000, so that I can say that I

represent about 10,000 voters, only 10,000 I may say; because I know some people claim that they represent 20,000,000 people, and most likely 19,500,000 of them are ladies and children. The only way to arrive at the truth of any subject is to be in that state of mind that allows one to look calmly and clearly at every side of the matter.

It has been contended by gentlemen on the prohibition side that this Hepburn bill does not interfere with the right of a citizen to receive shipments of liquor at his home, but do those gentlemen not see that with the right of a citizen to receive shipment is closely interwoven the right of the citizen of any other State to ship the package to him? This is but logical. In my opinion the Hepburn bill is nothing less than an attempt to delegate to a State the power to regulate and control an interstate shipment which has been by the Constitution of the United States placed as a sacred trust in the jurisdiction of Congress; and it is the sacred duty of the Congress to safeguard the rights of the citizens of the different States in relation to interstate commerce, and not be a party to a scheme which seeks to destroy the individual right of any citizen of any State in the Union.

This Hepburn bill would not only bring discord into the peace and harmony of the States and would stir up bitterness and unpleasant feeling among the people; it would not only mean a loss of many millions to the brewing interest and to the farmers, but it would also line the boundary of every temperance State with sneaks and smugglers, and as whisky can be more easily smuggled than beer, it would do the cause of true temperance far more harm than good. And we can not believe Congress is ready to pass any bill which is nothing less than a prohibition measure. You can not get away from that, neither would the Prohibitionists work as hard for its passage if it was only to regulate interstate commerce. The Union Signal, the organ of the Woman's Christian Temperance Union, shows its true character by saying (1904):

"The Hepburn bill is considered by our friends in Congress as important as any temperance legislation that has come before them during the last decade. It will be a battle royal, as 'our friends, the enemy,' will bring every power available to prevent its passage. We have changed the atmosphere in many a battle by our ceaseless presentations of petitions, and we shall have to again call upon you for a long pull, a strong pull, and a pull altogether. Petition blanks will be prepared at once, and, with accompanying directions, will be forwarded to State officers for distribution through the States."

I am a temperate man and I believe in temperance, and if a man knows that he has not control enough over his will to stop drinking when he has enough then he had better stay away from drinking altogether. But that the same man should say: "You shall not drink because I don't drink." That is ridiculous. I do not smoke, but while I do not smoke I do not interfere with my neighbor, who likes his cigar or pipe, although, I assure you, it is sometimes very offensive to me to inhale the smoke of a weed of a very doubtful character which a man blows into my face. But I believe in personal liberty, and this personal liberty is guaranteed to us by the Constitution of our great country and must be respected as long as it does not interfere with the liberty of our fellow-citizen.

Gentlemen, it is not the right thing—and my friends, the enemies of liberty, may take notice of this—it is not the right thing to prohibit the drinking of intoxicating liquors if you wish to make a man temperate. No; you must educate a man how to drink. And here I could not recommend anything better than the German way of drinking and enjoyment of life. It is in the interest of mothers and wives to share the diversions of men. Long experience has proved that wherever families jointly frequent public places the moral qualities have been highest and the greatest happiness has prevailed. A man should not go where his wife can not go with him; the presence of wives refines the men and restrains them from excesses, but our liquor laws compel a man to go alone. I am with heart and soul for true temperance, but I am in the same measure against prohibition. To prohibit things for a man who knows what to do and what not to do is wrong. That is for children who have not the sense to tell the right from the wrong, and you will also remember, perhaps, from your own experiences, that forbidden fruit only arouses temptation.

The good Lord created the things, and among them hops and malt, for the use of men, and Christ himself drank wine, which should prove to us that it is not wrong to take intoxicating drinks. It is not the use of the thing, no matter what it is, but the abuse, which is damnable in every instance; and abuse, excess in all things, must be avoided, also in legislation.

Do some of my friends from the other side, who make prohibition a source of income, criticise or perhaps condemn the Lord Christ because he drank wine? I know they do not follow in his footsteps, or they could not conscientiously accept salaries, high salaries, for their services, but would divide the money they receive with their importunate poor and starving brethren, as the religion they preach asks of them.

And to the professional lady prohibition agitators I would say: Attend to your duties as mothers, which should be the highest ambition of any woman—that is, raise your children in the right way; teach them the advantages and virtues of true temperance in all things, and they will bless you when they have grown up, and your heart will be at peace when the Lord calls you; but if you entice women away from their homes, from their duties as wives and mothers, to attend to numerous meetings, the curse of the men whose homes you have ruined will follow you. We have at present here in this city a so-called divorce congress to find ways and means to protect the homes. What causes the numerous divorces in this country? Why, the women instead of attending to household duties, instead of making it comfortable and pleasant for their husbands when they return home from work, attend temperance lectures, agitations, etc., and neglect their homes where they could be happy. If they would properly attend to their domestic duties we would have more happy homes, less dissatisfaction, and fewer divorces.

Prohibition is a form of tyranny, a restriction of the free will. Should a highly civilized nation, that fights all forms of tyranny, return to this mistake itself? And prohibition breeds one of the most contemptible of vices—hypocrisy, enticing men to secretly do that which they openly condemn. The prohibition laws not only deprive the man and husband of enjoying a glass of beer at home

within the circle of his family, but it also tends to estrange husbands and sons from their homes, entices them to places hidden from the eyes of the public and the law, and makes sneaks of them. Prohibition tends to destroy family life and happiness, deprives men—and women as well—of their individual right to eat and drink what they like, leads to secret vices and allures husbands from their wives and homes. If people did not want the liquor, they would not order and buy it. If you pass a law like the Hepburn bill, you will create law breakers, and if people get accustomed to break the law in certain instances, they will lose the respect for the dignity of the law, and break it easily in other cases.

STATEMENT OF CONRAD WITT, OF NEW YORK

MR. WITT. Mr. Chairman and gentlemen of the committee, I will not entertain you very long, as there has been so much spoken about this question that there is not much more for me to say.

I have been sent here from a body of men consisting of about 150,000 good American citizens. They have sent me here to hand in a protest against this bill. I do not see how anybody can go to work and dictate to anybody else what he shall eat and drink. I, Mr. Chairman and gentlemen, can tell you from an experience which I had myself where I drank these liquors, at least some of them, that they are actually a food for a great many people. I had, for instance, sickness in my own family, and the doctor told me there was nothing else that would help the sick person but to get a good bottle of champagne and give the person half a tablespoonful every hour, and the person got well.

MR. CLAYTON. That doctor must have been a homeopathist, was he not? [Laughter.]

MR. WITT. No, sir; he was not. [Laughter.] The person got over that sickness, and if he had not got that he might not have been over his sickness.

I can tell you another incident which I witnessed. I have seen the case of a fire where there was a woman carried out unconscious, and the first thing they ran for was a glass of brandy to bring her to again. And I think if they had not had that the woman might not have got over it.

I have another instance, gentlemen. I can tell you in my younger days my wife and I had small children. My wife nursed them, and by nursing them she felt so sick that the doctor gave her the order to drink every day a glass or two of good porter, and I thank the Lord my wife is well and healthy to-day.

I do not see why we should go to work and dictate to anybody what they should eat and drink. Let those people that do not feel inclined to drink anything do without it. Let them drink a glass of water. I do not object to it. I drink it myself, not only once a day, but a few of them every day, but I think if anybody feels inclined to drink a glass of wine or beer and thinks it is good for his health he should be permitted to do so. I would like to see some of our temperance women, if they should meet with an accident, as I have stated before, in a fire, and they should be carried out of a house unconscious and anybody should hand them a glass of champagne

or a small glass of brandy, whether they would shake their heads and say, "No; I can not take it. I would sooner die." I think they would grab it with both hands for the chance of living a few years longer.

No, gentlemen, I do not see the use of all this. There have been many arguments, and there will be others, probably, for a few days longer, and I do not see the use of taking the time of our Congressmen away from other matters on a bill like this, which never can be passed. Therefore, gentlemen, I think the quickest way we can do away with it the better it is for all of us. I thank you, gentlemen.

STATEMENT OF OSCAR FROTSCHER, OF PHILADELPHIA.

Mr. FROTSCHER. Mr. Chairman and gentlemen of the committee, I will not prolong your agony in listening to more or less interesting arguments very much. The legal and constitutional aspect of this bill has been exhaustively gone over, and I will not touch that phase of the question. A great mass of details have been brought before you, and I will not add to them. I shall merely attempt to give a few observations concerning the general principles and touching only on salient features and main outlines.

Coming before you as a representative of the German element of the population, I desire at the outset to disclaim any intention to advocate that the preponderating attitude of that element, which is well known, should have any weight in determining the issue unless, indeed, it coincide broadly with the paramount considerations for the general welfare.

I believe no group of citizens, whatever their bonds, not even the large group that is allied by the ties of the prevailing religion, should claim or should be accorded any special or exclusive consideration in this matter; for any solution arrived at from narrow or partial points of view can, in the nature of things, be but temporary, and is certain to come up for consideration later on.

I conceive that it is necessary to view this matter from a comprehensive point of view, embracing in it certain points, namely, a true conception of the fundamental characteristics of universal human nature, stripped of race or creed bias. Further, the proper consideration of the spirit of republican institutions and the proper regard for past experience.

Concisely stated, the issue here is as follows: Effective total prohibition is aimed at by the advocates of this bill. There is very little doubt about that. A reasonable license is demanded by the opponents of the bill. The issue, therefore, hinges on the question as to which of these two solutions would redound to the greatest benefit of the general weal in its totality.

The first two guiding principles which I hold should govern in leading toward an adequate solution of this issue, namely, true appreciation of human nature, stripped of incidentals, and the due consideration of republican institutions, almost coincide in the elements which they present for consideration; for it is an axiom that the republican form is the highest form of Government, mainly because it accords most closely with the fundamental desires and legitimate aspirations of the human being, in that it permits the greatest latitude

of individual self-determination, consistent with the orderly and progressive development of the whole.

The doctrine of *laissez faire* is the corner stone of democratic institutions in contradistinction to paternalism, that of autocratic forms. From these two points of view, in a republican form of government, a law which aims to restrict the rights of the citizen by regulating his individual daily existence is an anomaly.

Its effect here would be to coerce about ninety-nine one-hundredths of the normally constituted members of the population into depriving themselves of an element of legitimate gratification in their daily lives for the purpose of attempting to uplift the one-hundredth of their brethren who are deficiently endowed, and that without any guaranty of being successful in the attempt.

I hold that much greater stress of circumstances or conditions is required to justify a law of such pronounced paternalism with any hope of its becoming effective.

Concerning the third guiding principle, that of past experience, I submit that if it tended to prove that total prohibition would effect, as the advocates of this bill fondly hope, the redemption of about 1,000,000 deficiently endowed men and women from the slough of degeneracy and misery that fact would constitute a strong reason for advocating the passage of this bill, and, in a great measure, would justify the demand that seventy-nine other millions of normally endowed people be deprived of the, to them, legitimate and innocuous indulgence for reasons of charity and general humanity. Unfortunately, in the light of past experience, the most sanguine of the advocates of this bill can not hope that any such result would be brought about.

I maintain that the evil resulting from the excessive use of alcoholic drink and its concomitant misery can and will be eliminated in the constantly operative process of the evolution of the human race, and that a drastic measure of governmental proscription of the fundamental right of individual self-determination—and that is what prohibition means—would prove ill-advised and futile. I thank you.

STATEMENT OF FRITZ HENZLER, ESQ., OF NEW YORK CITY, N. Y.

MR. HENZLER. Mr. Chairman and members of the committee, you will kindly excuse me if I do not use the proper expressions that it is the custom to use here. Of course I am a man of the sword and not of the tongue. I am an old soldier, and can only say what I believe and what I think.

I, as the delegate of the German soldiers and riflemen of New York, protest against all encroachments of personal liberty, no matter from whom they proceed. We believe that each and every man should have the right to do what he thinks is good; and we do not believe that the National Congress should make a law to prevent the use of alcoholic beverages. Just as well could they make a law against the use of candy, because we think that candy is a cause of great distress to the people. Candy makes dyspepsia. Alcohol, used in a moderate way, does not. Candy does. Candy spoils the lives of the children, because they are dyspeptic before they arrive at an age to be useful to the community. They are already ill. My doctor says: "Forbid

your children to use candy." I do not give my children any candy, and I will not permit them to use it. I do not give them any liquor either. Still, I will not have any objection if they drink a glass of beer occasionally.

If Congress should pass a prohibition bill in a temperance State to fulfill its own ideas, it would without doubt be an encroachment of the personal liberty, and everything that is an encroachment will bring the people to commit crimes. For an illustration, you will please permit me to tell you what I saw last summer in Europe. I traveled through France, Belgium, Holland, and Germany, and a part of Austria. I saw in Frankfort-on-the-Main—I do not know the English name of the place—250,000 people in what they call the Frankfort City Park, where they were at liberty to drink all they pleased, and in all those 250,000 people I did not see one man or woman drunk. I traveled all over Europe last summer, and I did not see as many as ten or fifteen people drunk. In Maine, where they do not give out any licenses, I have seen people drunk on Sundays and on work days. Where did they get it? They got it in places where it was forbidden to get it. Give the people the liberty they want and they do not want it; and we, the German soldiers and sharpshooters of New York, protest against all encroachments of liberty, and we therefore beg you not to pass this bill.

In regard to the bill of Mr. Williams, I have this to say: He says that there shall not be any liquor brought to any temperance State C. O. D. in original packages. Suppose a man sends his money over to a factory or to a salesman in Chicago, and those goods arrive at his city or in his town and the bottle or jug is broken. I do not believe, if it is only an accident, that the manufacturer will give him another jug of whisky or another bottle of wine or anything of that kind. I think he will have litigation, and he is liable to be out of his money; and for that reason I am against this bill, too. We Germans are against any encroachment, it makes no difference what it is; and we beg you not to pass this bill.

Thank you for the kind hearing you have afforded me.

STATEMENT OF ADOLPH TIMM, ESQ.

Mr. TIMM. Mr. Chairman and gentlemen of the committee, I had the pleasure of submitting my views on the Hepburn-Dolliver bill at the last hearing. I only beg to add that we have received a great number of letters from different parts of the country in which the writers state that not only are they against the passage of the Hepburn-Dolliver bill, but, as far as they know, so are the great majority of the people of the States and of the cities in which they live. Furthermore, we have received from our western branches letters and dispatches in which they say that the time has been too short to make up delegations for this hearing, and for that reason they ask this honorable committee for another hearing and perhaps a little more time to make arrangements for sending delegations.

Mr. HEXAMER. That is all; thank you, Mr. Chairman. For the reason that our western people would like to be heard on this question, Mr. Chairman, I again beg that the committee will extend to us the courtesy of being heard a month from now, when we can have our people here.

(The committee thereupon adjourned.)

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D. C., March 6, 1906.

The committee met this day at 10 o'clock a. m., Hon. John J. Jenkins in the chair.

The CHAIRMAN. Are you ready, gentlemen, to proceed this morning?

Rev. S. E. NICHOLSON. Mr. Chairman, by an arrangement with the other side, the understanding is that the other side shall be heard first for a little while.

The CHAIRMAN. That is agreeable to you?

Mr. CHARLES J. HEXAMER, of Philadelphia, Pa., president National German-American Alliance. Yes, sir.

The CHAIRMAN. How much time will you gentlemen take?

Mr. HEXAMER. If you gentlemen will allow us, we will throw ourselves entirely upon the courtesy of the other side.

Mr. NICHOLSON. I think a half hour or three-quarters of an hour is enough for each side.

Mr. HEXAMER. Very well. Now, Mr. Chairman, I take pleasure in introducing first the Rev. C. A. Voss, of Pittsburg.

STATEMENT OF REV. CARL AUGUST VOSS, PASTOR OF THE GERMAN EVANGELICAL PROTESTANT CHURCH, PITTSBURG, PA.

Mr. Voss. Mr. Chairman and gentlemen of the committee, permit me to preface my remarks by stating that I personally do not use any intoxicating liquors in any form, so that my appearance before this committee in opposition to this bill may not be construed as having even the slightest of personal motives.

I appear before you to-day as the pastor of the oldest religious society in the Allegheny Valley, oldest without regard to nationality or denomination, a congregation which has always taken a decided position in the interest of liberty in every department of life, battling for freedom of thought, conscience, and action, contending that only thus can the true character of man be elevated and strengthened. Thus in my official capacity I stand here as a champion of personal liberty.

But primarily I present this argument to you to-day as the representative of the German-American National Alliance of Western Pennsylvania, an organization comprising more than 150 separate societies, having a joint membership exceeding 23,000 citizens. These German-Americans have come from a land where freedom dwells in the hearts of men, but dares not always express itself in words and deeds. Hoping to find an abode of freedom where the craving of their hearts could be satisfied and the yearning of their souls be stilled, they came to this country, and here have proved themselves the staunchest supporters of our country's institutions, the most devoted to its ideals, and the most jealous of its privileges.

From the very inception of our national existence these German-Americans have formed the backbone of our nation. Since Steuben and his associates gave wise counsel to the immortal Washington up to the present era, wherever questions of vital importance to the life, welfare, integrity, and progress of the nation were at issue the

German-Americans have always been found on the side that labored for a better and a higher life. With such a proud record as our heritage we hold that our position entitles us to a consideration of our opinions on this important issue and thank the members of this committee for this opportunity of presenting our arguments.

It is not the judicial side of this question that concerns us to-day, for this is not within our province. To-day we desire to direct your attention to the relation which the import of this bill bears to the great privilege prized by us as German-Americans—the divine gift of personal liberty. We wish to impress upon you that a large quota of good, respectable, law-abiding, yea, Christian men and women, spread over this broad land, are most bitterly and most emphatically opposed to the enactment of such laws as this one—that would accomplish nothing, but further the demoralizing advance of prohibitory endeavors.

We German-Americans see in this legislation now presented for consideration an attack upon republican institutions and a menace to the welfare of the nation at large. We have a higher ideal than that which is represented by the desire for a glass of beer or a schoppen of wine. In a spirit of true sacrifice we are devoted to the preservation of that which makes our nation great, and therefore we protest against the enactment of any law which would, like this measure threatens to do, have in its wake an increase of the nefarious practice of smuggling, invite lawlessness, produce hypocrisy, militate against true temperance, and undermine civic virtue.

It is a notorious fact that wherever strict Sunday laws have been enforced and the common people deprived of their opportunity to enjoy lawfully on this one day of freedom from toil the social intercourse induced by the companionship over the glass of beer, "speakeasies" and other demoralizing games have been opened, and instead of consuming their beverages in a lawful manner and possibly in company of their families and thus promoting true temperance, these common people in their effort to secure that which they consider their rightful privilege are compelled to repair to the dens where the greatest intemperance is fostered and the accompanying vices nurtured. Wherever prohibition laws have been enacted and enforced honest people have become dishonest and temperate people intemperate, for the usual and the most natural result has been the illegal procuring not of malt beverages—which would be more dangerous of detection, on account of their bulk—but rather of strong alcoholic liquors, the constant use of which is followed by disaster, desolation, and often death.

Intemperance has always been a curse, and no nation recognizes this fact more clearly and condemns the intemperate more sternly than the nation to which not I, for I was born under the Stars and Stripes, but which my forefathers belonged. An intoxicated man is seldom seen on the streets of Germany, and he who practices intemperance is denounced and shunned by his fellow-man. Our devotion to the cause of true temperance and to all that furthers and secures the sanctity and purity of the heart and promotes the law and order in the State has become proverbial.

We are contending for the preservation of the divine right of personal liberty. In this country, over which the banner of freedom floats, the home ought always to be revered as hallowed ground and

the highways leading to that home as the nation's unassailable property. No matter how extensive the power delegated to the police department of any State within our borders, guardianship ought never to be exercised over the sane and intelligent citizens nor control be given over the private and domestic actions of those whose forefathers sought this land of freedom. As free and sovereign people we hold as unassailable our right to regulate our lives and our homes as we see fit so long as in so doing we do not conflict with the welfare of our fellow-men.

Because one person loses control over himself by becoming intoxicated is no justifiable reason for denying the use of spirituous liquors to such as know how to use them rationally. Abuse on the part of one never provides a cause for the condemnation of millions of innocents. Because in this conglomerate nation the representatives of one national extraction are unable to curb their appetites and to control their passions can not reconcile the innocent sufferers to the apparent necessity of the punishment of all. On the same principle we could argue, because money has been the cause of crime, as evidenced in a marked degree in the recent disclosures in the circle of high finance, therefore abolish the use of money. Let us rather seek to educate men of stamina, able to control themselves, not weaklings, who must be tied to mother's apron strings or soothed even in the days of supposed manhood and independence by infantile food.

Prohibition laws have called forth the ridicule of the nations which, though controlled by monarchical powers, would hesitate to arouse the ire of their subjects by thus attempting to deprive them of their privileges and humiliating them before the world. Legislation against the unrestrained use of opium, cocaine, and other drugs is justifiable and commendable, because these are poisons, but until you can prove to the satisfaction of intelligent, fair-minded, and unbiased men that beer, wine, and other mild spirituous beverages are poisonous in their effects when used rationally it would be an injustice to accede to the demands of a fanatical, narrow-gauged, and narrow-minded minority, which fails to appreciate the joys of life.

We are clamoring for a principle which is dear to our hearts. The issue at hand is sufficiently important to arouse our indignation and decided opposition, even though it appears to some to be a mere bagatelle, for we look beneath the surface and recognize there an attempt to establish a precedent which would justify the enactment of such laws which would soon make freedom a sweet dream of the past. Our forefathers as well as ourselves have fought for religious, political, and personal freedom and have always been proud of the progress that we have achieved. To-day we appeal to you not to take a step backward by depriving your fellow-men of their private pleasures and their domestic joys, thus denying to the citizens of this nation the use of alcoholic beverages at their home table, the last place in the world where intemperance is fostered.

This measure is demoralizing, degrading, and humiliating, and its enforcement would surely frustrate the intentions of its supporters and produce what they least suspect, the terrible and deplorable conditions of hypocrisy, dishonesty, and immorality. It is an insult to the good judgment of sane and intelligent people and an attack upon the manhood of the citizens of this great and glorious Republic.

We hope that the gentlemen of this committee will be true to the

trust reposed in them and that the full light of reason shine upon their pathway, so that they may see the error of this measure and the serious dangers lurking among its results.

Mr. HEXAMER. Now, Mr. Chairman, I would like to introduce Mr. William Vocke, of Chicago, Ill.

**STATEMENT OF MR. WILLIAM VOCKE, ATTORNEY AT LAW,
CHICAGO, ILL.**

Mr. VOCKE. Mr. Chairman and gentlemen of the committee, I represent the Chicago branch of the German-American Alliance. Our objects are to cultivate the German language, the knowledge of which, the best scholars of America agree, is essential to the pursuit of all science. We believe that a sound mind can only be trained in a well-developed and healthy body, and we stand for those principles of personal liberty which have been the pride of the Teutonic race, of which the Anglo-Saxon is only a branch, ever since the dawn of modern civilization.

Otherwise I may truthfully say of myself what the gentleman who preceded me gave us to understand as to his position: I have no connection with a brewery or a distillery. I hold no mandate from a brewer or a distiller. I own no stock in a brewery or a distillery, and I have no retainer from the other side. I assert, therefore, that I am not interested and not related either by consanguinity or marriage to any one of the two parties to this controversy, but am here solely to represent the views of a modest American citizen without fear or bias, and as Abraham Lincoln said in his famous letter to Horace Greeley, that he wished all men to be free, so do I wish all men to be sober.

I want to preface my remarks on this subject by assuring you learned gentlemen of the Judiciary Committee that I have no intention to presume that I know more than you, or as much as you, about the constitutionality of this question. But permit me to remark that as I read this law yesterday—this proposed bill, I mean—it struck me that it contemplated something which can not be permitted under the Federal Constitution, because the Constitution says that Congress shall regulate the interstate commerce.

What is interstate commerce? Is it complete when you interrupt the shipment of an article of interstate commerce before it is delivered to the consignee? At the time it reaches the boundary of the State has Congress the right to allow it to be stopped in transition and to render the delivery imperfect?

As regards an article the shipment of which is not entirely prohibited as generally deleterious, the interstate commerce can not be crippled in that way to the injury of the parties concerned, because it is not interstate commerce until the goods in question pass from one State into the other unhindered, i. e., from the consignor into the hands of the consignee. If the goods shipped from Illinois, intended for a consignee in Iowa, can be seized by the police authorities of Iowa right at the boundary of the State, as it is contemplated by this bill, where is the interstate character of the shipment? But be that as it may, you gentlemen can grapple with all these questions very much better than I, and I understand there have been discus-

sions before this learned body before in which that element has been thoroughly exhausted. I am therefore requested by the officers of the German-American Alliance to concern myself with the ethical side of this question rather than with the other.

Now, gentlemen, I maintain with Pastor Voss that this proposed legislation is vicious in the extreme. I believe I can illustrate this subject by giving you a few examples from my own experience, relating to the character of the very laws which this bill is designed to aid. It was about eighteen years ago, when I had to try a case in the circuit court at Iowa City, Iowa. It was a hot July day. I had exercised myself in my argument to the court and the jury for several hours and had become weary and thirsty. I want to be perfectly honest with you. I am 67 years of age. I have used beer and light wine to a moderate extent ever since I arrived at the age of manhood, and I have always, for forty years past, been considered a very excellent risk in the life insurance companies of this country, particularly in the Connecticut Mutual, the best in the world. The outcry against the moderate use of beer is unreasonable. The great German chemist, Liebig, calls beer liquid bread, and as to its health and strengthening qualities the equally great French scientist, Pasteur, fully agrees with him. But to return to my experience in Iowa City.

I had become quite exhausted in my efforts before the court, and I felt that I needed just one glass of beer. I said to my friend, a young lawyer who sat by my side, and with whom I had maintained quite a correspondence in the case, that I would like him to take me to some place where I could get some refreshment in the shape of a glass of beer. He said, "Oh, yes; that is all right. Let us go down the street." I had heard that Iowa had passed some very restrictive temperance measures, but I was entirely unfamiliar with the character of the legislation that had been enacted. So we walked down a few blocks and stopped in front of a store, the windows of which were covered with shutters.

My friend rapped at the door, which was locked on the inside, and it was opened by some one within. We entered and I expressed my desire to the host. He pointed me to a sign suspended from the center of the ceiling, and I read upon it these words: "No liquors sold except for sacerdotal, medicinal, or culinary purposes." I said to the host, "I do not want a glass of beer for sacerdotal purposes, because I am not a minister of the Gospel nor a hypocrite; I do not want it for medicinal purposes, because I am neither a doctor nor am I sick, and I do not want the beer for culinary purposes, because I am not a cook; but I am quite thirsty. Will you give me a glass of beer?" With that the host gave my friend a significant look, and we walked into the back room, and there the host brought out a bottle of Milwaukee beer with two tin cups and a corkscrew, and we sat down and each of us emptied a cup of that beer.

I say to you, gentlemen of this committee, and to you, ladies and gentlemen, who all, like myself, want to do the very best for the cause of temperance, that this incident was to me a source of deep humiliation, because I had then for the first time in my life willfully violated a law of a great State of this Union. I expressed my sentiments to my friend, who was in other respects a law-abiding and honorable citizen of the town. I said to him that I felt cheap and

mean for what I had done. But he answered with utter indifference. "Oh, that, is nothing; that is done here every day. We are forced to do it: we are forced to break the law every day."

Is that wise legislation? I ask you, gentlemen, in all candor, is it proper that the great Government of the United States of America should lend its hand to the enforcement of such legislation? Have we not more important things to do than that? Are you gentlemen of this committee not charged with weightier problems than that?

Let me give you another example from my own State of Illinois, where I have lived nearly fifty years. Some years ago, in the fall, I had to try a case before Judge Eppler, in Petersburg, Menard County. When I was through with my labors I had the same desire for a glass of beer. The host told me I could not get it in town, because local option prevailed there, but that if I walked a mile down in a certain direction I would find a little place where I could get all the beer I wanted. It was a beautiful autumnal day, just such a day when you like to be out in the open fields and in the tinted woods, and I walked along, enjoying the air and the scenery.

After having traveled some distance I noticed a little house about half a mile farther away, from which loud noises reached my ear, and as I approached the premises they showed in their whole appearance that they had been improvised for the very purpose to which they were devoted. The house consisted of one small room, containing nothing but a rough counter, with a bulky man behind it, and a barrel of beer and some tin gallon measures at his side. The noise I had heard was created by the boisterous talk of a number of men—twelve or more—back of the house in an inclosure covered by a board fence as high as 6 feet. I asked the host for a glass of beer. He told me the law allowed him to sell beer only by the gallon. "A gallon!" I exclaimed. "Why, my small capacity does not hold one-tenth part of that. I want a glass." He replied, "No; you must pay for a gallon if you want a glass, and you can not drink it on the premises here; you must drink it back there," pointing to the inclosure I have mentioned.

I was curious to see who the people were back there, and so I handed over to the host the price of a gallon of beer. When I reached the yard the filled gallon measure was placed before me with a cup. I had hardly sat down, in order to study the faces of the crowd, when I heard somebody cry out my name, with a friendly halloo, and as I looked around I recognized in this person who called me the sheriff of the county of Menard, who had served processes for me on the day before. I asked him about this most remarkable custom that prevailed in his bailiwick and which, in order to keep a man sober, forced him to buy a gallon of beer, while it denies him a glass, remarking that I felt like saying to its advocates what the old lady out West, in one of the great Emancipator's best anecdotes, said with indignation about her minister whose conduct was not entirely in harmony with his pious professions: "If you represent Christ, then I am done with the Bible." All the sheriff could answer was that the people would not tolerate any beer hall in town, no matter how respectable, and so they were driven to the suburbs, where they had to evade the law by drinking in the back yard, "away from the premises," and buying the beer wholesale.

I took a cup of beer from the gallon measure, leaving the rest to those thirstier than I, and went back to the hotel, where I had to stay over night, because I had not got through with my business, and when at about 8 o'clock in the evening I sat in front of the hotel I saw several of these men coming back from the place where they had been spending a number of hours, passing through the street in a condition very humiliating to any gentleman.

Now, would this be as likely to happen if a respectable place in town, right in the face of the neighbors, and in the fear and shame of the neighborhood, were kept by a respectable person, placed under proper police control, and the whole system under the vigilance of honest and efficient officers?

After all, that is what you well-meaning people on the other side should be laboring for.

Now, if you will go to work to secure temperance by the beneficent influences which should prevail in every home in the land, by the enactment of reasonable laws—not unreasonable measures like this—and by the enforcement of such laws through the agency of honest and efficient officers, you will accomplish all the good that can be accomplished in the direction of your efforts. You will never accomplish it in the way you pursue.

I join all those who know the facts, who have studied them carefully, and in whose candid opinion prohibition can not be enforced. If I remember aright, within a few years before his death the very originator of the Maine liquor law, Neal Dow, confessed that he made a grievous mistake in securing its enactment. Will anybody tell me that prohibition has ever prohibited in Maine? Did it ever prohibit in Massachusetts? Did it ever prohibit anywhere else where it was attempted? It has been a failure everywhere; it has resulted in making people hypocrites and lawbreakers; it has bred contempt for the law. Is there any question but that if you breed in a citizen a feeling that he can break one law with impunity, it is but one step toward the breaking of other laws, laws of more serious import than the temperance laws?

The objects you have in view may be ever so noble. You should be encouraged in all that which is attainable. Enact reasonable laws, but not measures prompted by fanaticism. Teach by moral precepts the blessings of temperance and the curse resulting from excesses to body and soul. Prohibition you will never be able to enforce. The experience of the past must have taught us all that this is an indisputable fact, that the prohibition element in this country is not as strong as it was in former times, but is dying out, and that in the course of the next generation hardly anything will be left of it.

MR. PALMER. What is this gentleman's name, Mr. Chairman?

THE CHAIRMAN. Mr. Vocke.

MR. PALMER. Then, Mr. Vocke, if you have any objections to this bill, I wish you would state them. I do not think the Prohibitionists need your advice.

MR. VOCKE. Mr. Chairman, I said at the outset that I had been requested to touch upon the ethical side of this question only. The cloven foot of prohibition is clearly apparent in this bill, and it is, therefore, proper to show whether prohibition should be advocated by this Congress or not. I raise the objection that it should not.

But, besides the constitutional and ethical questions involved in the bill, there is also an economic side to it. If this law is enacted, having for its object, for the accommodation, now, of one or two States, to keep fermented, vinous, and intoxicating liquors out of their boundaries, all the 40 States in the Union can pass temperance measures similar to those prevailing in Maine, Iowa, and Kansas. Of course, to all of them this same bill would apply. The traffic and interstate commerce in liquor would then be at an end, and that very article of interstate commerce which has, ever since the year 1862, yielded hundreds of millions of dollars of internal-revenue taxes to the Federal Government, without which it would probably have been impossible to carry on the war in order to prevent the destruction of our Union, would be extinguished as a subject of taxation. This would be like killing the hen that has laid the golden egg.

True, the pending bill is not intended as a revenue measure; but would it not, in its operation, have the effect of disturbing that very uniformity which is expressly provided by the Federal Constitution in these words: "All duties, imports, and excises shall be uniform throughout the United States?" The levying of such duties, etc., is the first in order and among the most important powers delegated to Congress; and, in the language of the great Webster, the Union under the Constitution "had its very origin in the necessities of disordered finance, prostrate commerce, and a ruined credit."

My time does not permit me to pursue this subject any further and to point out what incalculable injuries the contemplated legislation would cause to our farmers and to almost all other classes of society.

But is it in harmony with the spirit of our Federal Government to enact a measure like the one now before your honorable committee? Let us admit that Iowa and Kansas have the right to pass whatever temperance legislation they please. We do not wish to take them to task for that. It is all a matter of taste, and hence we will cheerfully follow in this matter the clever advice of our great American humorist, Mark Twain, given on his seventieth birthday, to the effect that while the indulgences he followed agreed with him, it was not necessary for anybody else to follow them, because they might not agree with anybody else.

But I want to urge that it is not the part of the Federal Government to pass laws in support of such cranky legislation as that we find in those States, and it seems to me that the pending measure is absolutely out of place in the Congress of the United States. I have always looked upon this glorious Union and its Central Government as I do upon the mild June sun, radiant with light, does not destroy or oppress, but warms and fructifies wherever it sheds its genial rays. None but those who follow certain occupations subject to internal-revenue taxation or Federal control, or a certain class of wrongdoers ever feel the arm of that Government. In the daily walks of life it is hardly ever noticed except when we stamp our letters for mailing or count our greenbacks. That grinding oppression which is sometimes felt as the result of sumptuary laws or of a petty police despotism is not of the nation, but invariably the work of an intolerant crowd ruling in smaller communities.

Our Federal Government is designed to shed beneficences only. I insist, gentlemen of this committee, that that Government is too great and too broad ever to engage in the unworthy work of aiding any

one of the States of this Union in the enforcement of its antili liquor laws or measures of that kind. The State of Iowa claims that the passage of this bill is required in order to enable it to secure a proper exercise of its police powers. If, aside from those extreme cases in which the State may call for aid upon the Federal Government as provided by the Constitution, the State means to exercise any of its inherent powers, it should possess inherent strength enough to assert those powers and not reduce the Federal Government to the humiliating position of a ready handmaid in matters so highly obnoxious to a large and respectable part of its own population.

I have said before that I am not going to argue with you learned gentlemen about the constitutionality of this measure. I maintain, in my humble opinion, that it is unconstitutional. I do not believe it will stand the test of the Federal Supreme Court. But be that as it may, it is improper in every respect, and it is certainly unworthy of a great legislative body like the Congress of the United States.

Gentlemen, I thank you for your attention.

Mr. NICHOLSON. Mr. Chairman, it is now 11 o'clock, and I understood you wished to go on with the hearing until 12 o'clock.

Mr. HEXAMER. Yes.

Mr. NICHOLSON. Then may I proceed, Mr. Chairman?

The CHAIRMAN. Certainly.

**STATEMENT OF REV. S. E. NICHOLSON, OF HARRISBURG, PA.,
SUPERINTENDENT OF PENNSYLVANIA ANTI-SALOON LEAGUE
AND SECRETARY OF THE AMERICAN ANTI-SALOON LEAGUE.**

Mr. NICHOLSON. Mr. Chairman and gentlemen, I would like to say at the outset that I regret exceedingly that Mr. Dinwiddie, whom I think most of you know personally—he is the legislative superintendent of the American Anti-Saloon League—is in bed sick, and is unable to attend this meeting.

As secretary of our American Anti-Saloon League I have been asked to be present to-day, and with your permission I would like to speak on our side of the question. I can not express too strongly my regret that Mr. Dinwiddie is not here, because he has thoroughly covered this entire question in his investigations, and I have no doubt whatever that he would have been able to present some solid arguments upon this side of the question.

Mr. Chairman, if I understand the question rightly as involved in this bill, I do not care to enter into a debate concerning the statements and arguments that have been presented here to-day. It was not my good fortune to hear the discussion some two weeks ago upon this measure, and I do not know what was presented at that time, but if I understand this measure the prohibition question is not involved in it except in the most remote degrees, for may I call your attention to the fact at the outset that this bill does not propose to close a single saloon?

Under this bill, so far as the terms of the bill are concerned, there is no prevention of the shipment of any intoxicating liquor from one State of the Union into another State, and so I shall choose to eliminate from my part of the discussion the entire prohibition question, simply saying this, that I think the arguments and statements that have thus far been presented to the committee to-day would be en-

tirely appropriate in a State campaign to be presented before the people as an argument from the standpoint of those gentlemen why the State should not enact a prohibitory law.

The CHAIRMAN. Will you allow me to ask a question for my own information?

Mr. NICHOLSON. Certainly, sir.

The CHAIRMAN. You say the object of the bill is not to prevent the transportation of liquor from one State into another?

Mr. NICHOLSON. No; I said, so far as this bill is concerned, there is no prevention of the shipment of intoxicating liquor from any State of the Union into another.

Mr. NEVIN. You are talking of the Williams bill?

Mr. NICHOLSON. No; the bill 13655—the Littlefield bill. So far as this bill is concerned it does not by its own provisions prevent the shipment of any liquor from one State into another. And that brings me at once to the principle, as I regard it, which is involved in this measure—the only principle, it seems to me—and that is whether or not the dealing with the liquor question by statute shall be relegated to the States.

I would call your attention—and I am not going to enter into a lengthy argument, Mr. Chairman and gentlemen of the committee—to the fact that for a period of about half a century prior to the year 1888 it seemed to be the general opinion, recognized by the courts and by Congress, that the States had complete jurisdiction of the liquor question. About the year 1888 in a case, I think, that came up from the State of Iowa, the question was again brought before Congress—brought before the Supreme Court. I mean—and by a series of decisions through two or three years there came finally what was known as the original-package decision, by which the Supreme Court seemed to reverse itself. I think I am right in making that statement, because in a prior decision Chief Justice Taney had clearly established the fact that in the absence of any Congressional action the States had complete jurisdiction over the liquor traffic. But in the original-package decision a contrary opinion was rendered to the effect that under the interstate-commerce law, inasmuch as Congress had not relinquished any of its rights by statute, liquors could be shipped in from one State to another State. Not only that, but they could be delivered to the consignee, and the consignee in turn could direct that interstate-commerce shipment into the general traffic of the State the interstate-commerce character of that liquor remaining so long as the original package was not broken.

I think I am right in making that statement. Hence, new conditions arose, and many of the States—a few of them in particular, but many of them in a general way—began to be burdened, as they felt, under that decision. Original-package houses sprang up in the State of Kansas and in the State of Iowa, and in spite of the fact the States had undertaken to prohibit the traffic in intoxicants from these original-package houses these interstate-commerce shipments in unbroken packages began to be distributed promiscuously among the people.

Then you will remember the appeal came to Congress, for in the original-package decision it was hinted very strongly, at least, that Congress would have the power to act. So there was enacted the

Wilson law of 1890, with which you are familiar, undertaking to change the time when the interstate-commerce character of the shipments of the liquor should cease. Prior to that time, as I said, the shipments could be sold by the consignee if sold in unbroken packages. Under the terms of the Wilson Act the point at which the interstate-commerce character should cease was decided to be at the time of delivery to the consignee, or to use the exact words of the statute, "at the time of arrival within the State," which was construed by the court to mean, at the time of delivery to the consignee, that it had not in a legal way arrived within the State until the delivery had been made to the consignee.

The question of the constitutionality of that act was taken to the Supreme Court, and, notwithstanding it has been stated this morning that a measure of this sort is unconstitutional, the court held that the Wilson Act was constitutional.

May I read you just one or two statements from that decision? I have it here, Mr. Chairman. I want to call your attention to this fact first, that in a prior decision, in what is called the case of *Leisy v. Hardin*, the Chief Justice says:

The conclusion follows that as the grant of the power to regulate commerce among the States, so far as one system is required, is exclusive, the States can not exercise that power without the assent of Congress.

Now, the Wilson law was declared by the Supreme Court to be constitutional, and in the decision of the Chief Justice in that case it was stated:

Congress has now spoken and declared that imported liquors or liquids shall, upon arrival in a State, fall within the category of domestic articles of a similar nature. Is the law open to constitutional objection?

Here is what is said on that point:

It does not admit of argument that Congress can neither delegate its own powers nor enlarge those of a State. This being so, it is urged that the act of Congress can not be sustained as a regulation of commerce, because the Constitution, in the matter of interstate commerce, operates *ex proprio vigore* as a restraint upon the power of Congress to so regulate it as to bring any of its subjects within the grasp of the police power of the State. In other words, it is earnestly contended that the Constitution guarantees freedom of commerce among the States in all things, and that not only intoxicating liquors be imported from one State into another without being subject to regulation under the laws of the latter, but that Congress is powerless to obviate that result.

That is the result. Now here is the summing up of it:

No reason is perceived why, if Congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competency to do so.

The differences of opinion which have existed in this tribunal in many leading cases upon this subject have arisen not from a denial of the power of Congress when exercised, but upon the question whether the inaction of Congress was in itself equivalent to the affirmative interposition of a bar to the operation of an undisputed power possessed by the States.

And again:

The framers of the Constitution never intended that the legislative power of the nation should find itself incapable of disposing of a subject-matter specifically committed to its charge. The manner of that disposition brought into determination upon this record involves no ground for adjudging the act of Congress inoperative and void.

It seems to me, Mr. Chairman, that the decision of Congress on the Wilson bill has established clearly the right of Congress to deal with this question.

Now, under the Wilson Act other conditions have arisen in many States of the Union that are as intolerable almost, as many people believe, as the condition which grew out of the original-package decision, for it has been shown, I think, in the hearings on this question before this committee here two years ago, and it is in the knowledge of many of the members of this committee, that under these conditions by which liquors can be shipped into a State and delivered to the consignee, gross abuses have grown up under that provision.

It is very often the case that liquors are shipped into a given community not only addressed to persons giving their proper names, but sometimes addressed to Mr. A or Mr. B or Mr. X or Mr. Y, and so on. They are then held in the express offices, and from time to time some one comes in who is willing to pay the C. O. D. charges, and who says: "I am Mr. A" or Mr. B or Mr. X, and so on, and gets the liquor. The express companies' offices, in some instances, becoming storage houses for liquor, which is dispensed throughout the community from time to time, in very many instances contrary to the State law which exists upon this question.

I need not go into detail along that line, but that gives simply a little idea of some of the abuses against which the people have been protesting throughout the country, and which add to the widespread request and desire that Congress take some additional action that will give relief from these present burdens that exist.

I think it is interesting to note this fact in passing, that in reading the debate prior to the enactment of the Wilson law in Congress I find that practically the same arguments were advanced by members on the floor of Congress for the enactment of that law as those that are being advanced to-day for the enactment of this bill; and undoubtedly in the minds of many of the Congressmen, at least, it was intended at that time to cover this entire question by which the control of the liquor traffic should be left entirely to the States. But by what may be the unfortunate language of the bill the word "arrival" was construed by the court as I have suggested, so that the only point now involved in this measure is the willingness of Congress to simply take an additional step, which I believe many of the Congressmen believe they did take when the Wilson Act was enacted, and pass such legislation as will relegate the jurisdiction of this question entirely to the States.

Upon that point, it seems to me, we hardly need any argument. The whole theory of the relationship of the Government to this question from the very beginning has been that idea that a State shall have complete jurisdiction, under its police powers, with reference to that which directly and immediately concerns its own citizens. And we believe Congress is fully justified under the conditions that have grown up under the Wilson law in taking such action as will relegate the whole question back to the jurisdiction of the States, allowing the States to enact such legislation as they may determine will be for the best interests of their own people.

THE CHAIRMAN. Have not the States always had the exclusive power to prevent the sale or manufacture of liquor?

Mr. NICHOLSON. So far as the manufacture and sale of liquors are concerned and the sale after it is manufactured in the States, yes; but under that interstate-commerce law and under the Wilson Act and under the decision of the court construing the Wilson Act, the States have not had jurisdiction, because the interstate character of the shipment holds—before the Wilson Act until the original package was broken, and under the Wilson Act that interstate-commerce character holds until the delivery has been made to the consignee; and under that very gross abuses have arisen, as I said.

The question you suggest did apply, as I stated a while ago, to the period of about half a century prior to the year 1888, when it was admitted, seemingly both by Congress and the Supreme Court, that the States had jurisdiction not only of liquors manufactured within the States, but also over those that came from one State to another.

Mr. SMITH, of Kentucky. Your contention, as I understand it, is that the State should be endowed with power to prevent interstate commerce in liquors? That is it, essentially?

Mr. NICHOLSON. Yes, sir; that is what it amounts to; and in doing that I would suggest not that Congress shall be asked to delegate a power to the States which Congress has no power to do, but rather that it shall simply change the character of the interstate article of shipment and say that its interstate-commerce character shall cease when it arrives within the State and before delivery to the consignee.

The CHAIRMAN. Your idea is to do indirectly what the law says shall not be done directly?

Mr. NICHOLSON. I do not know what law you refer to.

The CHAIRMAN. That Congress can not delegate its power to the State—you concede that?

Mr. NICHOLSON. Yes.

The CHAIRMAN. Then how can Congress withhold its protecting power to interstate commerce?

Mr. NICHOLSON. To answer that I simply go back again to the decision on the Wilson Act, which, I think, fully covers your question, because the same questions would arise there. Prior to the enactment of the Wilson Act the interstate-commerce character of the shipment of liquor did not cease until the original package became broken and entered the arena of State commerce.

Mr. STERLING. Does not the decision you read from make the very distinction that exists between the Wilson Act and this bill?

Mr. NICHOLSON. I do not think so. May I call your attention to the fact that before the Wilson law was enacted the court said that the State did not have jurisdiction without the assent of Congress, plainly indicating that it was within the province of Congress to take action? And immediately following that the Wilson bill was enacted, which changed the time when the interstate shipments ceased to be an article of interstate commerce and became a State article of commerce.

Now, then, I do not think there is anything within that decision that at all raises the point that you suggest. The contention that we have is simply this: That Congress, having taken action at one time clearly within its powers, as the Supreme Court has decided, changing the time when the article ceases to be an article of interstate commerce to an earlier time, Congress may take further action

and fix that time at a still earlier period, in order to carry out the policy that we believe should be carried out, of giving the States complete jurisdiction over the sale within their own borders.

Mr. CLAYTON. Where does Congress get the power to enact such legislation? Is it not derived from the interstate-commerce clause of the Constitution?

Mr. NICHOLSON. Yes; from the Constitution, which says that Congress has the power to regulate interstate commerce. That has been clearly shown from the decision.

May I just interject this thought, Mr. Chairman, that having had no word of this hearing definitely until last evening, I am not prepared to cite immediately all the decisions, but having given considerable attention to this matter two years ago, and more or less since that time, I am, in a general way, well acquainted with the idea which we are aiming to get at in this measure. I think that Mr. Clayton has suggested that which is the right foundation to start from.

Mr. PALMER. That has been decided by the Supreme Court in this Rahrer case. I will read you from 140 United States Reports, page 545:

The act of August 8, 1890 (26 Stat., 313, ch. 728), enacting "that all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale, or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise," is a valid and constitutional exercise of the legislative power conferred upon Congress; and, after that act took effect, such liquors or liquids introduced into a State or Territory from another State, whether in original packages or otherwise, became subject to the operation of such of its then existing laws as had been properly enacted in the exercise of its police powers, among which was the statute in question as applied to the petitioner's offense.

That shows that Congress has the power to do this thing and has the right to declare that the interstate package shall be subject to the police power when it arrives within the State, so that settles the question as to what the Supreme Court has decided on that point.

Mr. CLAYTON. It had the power to enact such legislation in pursuance of its power to regulate interstate commerce.

Mr. PALMER. Exactly so. There is no question about the power of Congress to do it.

Mr. CLAYTON. I infer, Mr. Nicholson, that you are not a lawyer?

Mr. NICHOLSON. No, sir.

Mr. CLAYTON. I inferred it from the line of your argument.

Mr. NICHOLSON. And yet I think the decisions of the Supreme Court are clearly in line with the idea that Congress can regulate it, if it sees fit to do so, or bring about the entire abolition of any article of commerce by internal regulation. The internal regulation would go to that extent if Congress saw fit to exercise its authority.

Mr. PALMER. I understand that you were here last session when this subject was under discussion before?

Mr. NICHOLSON. Two years ago.

Mr. PALMER. When this committee reported a bill, which was understood to be satisfactory to both sides. In that bill it was provided

that it should not apply to the shipment of liquors to anybody who wanted them for his own use.

Mr. NICHOLSON. Well, Mr. Chairman, I am thankful to Mr. Palmer for bringing that up.

Mr. PALMER. I want to know if that bill would be satisfactory to the temperance people now? I believe it was satisfactory to them in the Fifty-eighth Congress, and it was reported unanimously, I believe, except that Mr. Parker thought some other kind of a bill would be better.

Mr. CLAYTON. Yes; in Report No. 2337, Fifty-eighth Congress, second session.

Mr. NICHOLSON. I may say that immediately after the report of the committee it was my privilege to take up the question with Mr. Dinwiddie and some members of this committee and discuss the question whether or not there was not grave danger involved in that, and second, whether there was any necessity for it. In the second place, I think I can speak for the organization which I represent and for Mr. Dinwiddie, and say that is not satisfactory.

And if you will bear with me a few minutes longer, I want to cover another point. I would like to read you what I prepared on that very point while coming down on the train from Harrisburg this morning. Therefore I will address myself simply to the question that Mr. Palmer has asked.

Mr. BIRDSALL. Does not this Littlefield bill in fact have that provision now? Let me call your attention to the proviso clause in section 1. The bill first provides that the liquor shall be subject to State law immediately upon passing the boundary of the State, and then there is this proviso:

Provided, That shipments of such liquors entirely through a State or Territory and not intended for delivery therein shall not be subject to the provisions of this act, nor shall this act authorize the infringement of the right of common carriers to continuously transport such merchandise from without such State to a station therein.

Mr. NICHOLSON. I do not think that covers the question which Mr. Palmer has asked.

Mr. BIRDSALL. What do you understand that to mean, then?

Mr. NICHOLSON. The first part of that plainly has reference to the shipment. For instance, if a Pennsylvania dealer wanted to ship into Indiana, the Ohio laws could not stop it if it was sent to some one in the State of Indiana. It has reference to the shipment through the State, so that that does not govern the question at all.

Mr. BIRDSALL. I call your attention to it. If it does not mean that, I do not know what it does mean.

Mr. PALMER. That provides that a common carrier can transport the merchandise to the State to which it was sent. It could not be seized until it got to the station to which it was sent. The question I want to have answered is whether they have any objection—whether your people have any objection—to a man getting a case of beer, for example, for his own use? When we had the subject up before there did not seem to be any objection to that, as a right guaranteed to a man by the Constitution—

Mr. SMITH, of Kentucky. And the advocates of that measure at that time denied that that was their purpose and did not want to take it from you.

Mr. PALMER. I want to know what my temperance friends think about it. I confess I belong with them in a measure. I was chairman of a State Prohibition campaign committee at one time in Pennsylvania. I would like to know what our temperance friends think of that provision. I do not want you to understand from what I say, however, that I am a teetotaler. [Laughter.] I believe in prohibition for the other fellow. [Laughter.] But I am not so weak-minded as to fail to see that a man can be a Prohibitionist and yet not be a teetotaler. [Laughter.]

The CHAIRMAN. Let us hear Mr. Nicholson's reasons.

Mr. NICHOLSON. I jotted them down hastily in the train as I came down here.

It will be remembered that at the session of Congress two years ago an amendment was incorporated by this committee in what was then known as the Hepburn-Dolliver bill, embodying this same principle of legislation, exempting from the provisions of the bill liquors shipped from one State into another, intended for personal use. I understand such a proposition has been made or is to be made concerning this measure, and it is against such an amendment that I desire to protest most strongly. I may say, without violating any confidences, I think, that the incorporation of this amendment two years ago was a chief reason why the Anti-Saloon League felt itself debarred from any further effort to try and secure favorable action by Congress on the bill.

Speaking for myself alone, I feel strongly that such an amendment nullifies in large part the purposes of this proposed legislation and opens up endless opportunities in every State for the evasion of the law.

Plainly, as has been stated, the purpose of this bill is by an act of Congress to so change the character of interstate shipments of liquors that they shall lose their identity as articles of interstate commerce at a point earlier than is now provided under the Wilson law; that this shall occur upon entry into a State and before delivery to the consignee, and therefore shall thereafter be subject entirely to State jurisdiction. Such an amendment, as I have referred to, at once limits the scope of the bill, and if enacted into law would at once mean that the States would have jurisdiction over some liquors when shipped from another State, and that they would not have jurisdiction in other cases. To put it more plainly, the State would then have jurisdiction over liquors shipped in for the evident purposes of traffic, but not jurisdiction over those intended for personal use by the consignee.

What is the need of such legislation? Under the Wilson law, as construed by the Supreme Court, liquors may be delivered to the consignee, when they immediately lose their identity as articles of interstate commerce, and the consignee is debarred from disposing of these liquors in violation of State law. For what purpose, then, are liquors now permitted to be shipped in, except for personal use? Congress, by the Wilson Act, destroyed the power to traffic in such liquors in violation of State law; then what is gained in this proposed act if it is to be qualified by such an amendment?

I grant that there is this advantage, that the storage of liquors in express offices, and the delivery to any and all who are willing to

pay the C. O. D. charges, will be broken up, but this will be obviated by the shippers being a little more careful to get the exact names of the consignees, and the storage rooms will be transferred from the express offices to the houses of the shippers themselves. The traffic, which has constituted the necessity for the legislation proposed in this unamended bill, will go on with hardly perceptible decrease, and we will continue to witness the spectacle of wholesalers and manufacturers of another State being permitted to engage in a business in a State and derive profits therefrom which are denied its own citizens.

It is argued, however, that such a provision is necessary, that the right to import liquor for personal use carries with it the right to ship such liquors and can not be abridged by legislation. If that be true, that right exists by virtue of the power of the Constitution or by virtue of an inherent and inalienable right, and not by any force that this proposed amendment can give it. If such right exists, then the only purpose of the amendment, or at least its only effect, would be unnecessarily to advertise the fact that the interstate traffic in liquors may be allowed, amounting to the same thing as a license to carry on such traffic. But is there any such constitutional or inherent right?

Mr. SMITH of Kentucky. Do I understand your proposition to be that although the citizen may have the inherent right to get liquor from without the State for his own personal use, yet his rights are not to be advertised and made known to him—these rights that the people have ought not to be made known to them?

Mr. NICHOLSON. No; this amendment does not add anything to the rights which the citizens have.

Mr. SMITH of Kentucky. And the citizen ought not to be made cognizant of the rights which he has?

Mr. NICHOLSON. No; it will add to the burden—

Mr. CLAYTON. If we do not recognize that constitutional right, may it not imperil the constitutionality of this act? You have read the case of *Vance v. Vandercook*, in 170 United States Reports?

Mr. NICHOLSON. Yes; I was coming to that. In that case there has been claimed to be an inherent right or a constitutional right.

Mr. CLAYTON. Wait; here is the language of Justice White on that matter:

Indeed, the law of the State here under review does not purport to forbid the shipment into the State from other States of intoxicating liquors for the use of a resident, and if it did so it would, upon principle and under the ruling in *Scott v. Donald* (165 U. S., 58, 170), to that extent be in conflict with the Constitution of the United States.

Mr. NICHOLSON. Yes; I was familiar with that, and I covered that in this argument here.

Mr. CLAYTON. If that is the objection, what is the objection to leaving it in the law? If it is true, why not state it?

Mr. SMITH, of Kentucky. The point he just made was that it will not let the people know it.

Mr. PALMER. The point you made a while ago was that a man did not have such a constitutional right.

Mr. NICHOLSON. Of course, if that proposition does not appeal to you I will not go into it further.

It is asserted that this is affirmed in the *Vance v. Vandercook* decision, but I call your attention to the fact that this decision was rendered in the light of the interpretation of the Wilson Act. Certainly under that law it would have been a violation of the Constitution to forbid shipments of liquor intended for personal use, because the interstate-commerce character of the liquor did not cease until delivered to the consignee, and any interference by a State beyond that point would have been in violation of the Constitution, which gave to Congress sole control over such commerce.

Mr. CLAYTON. Would you mind my quoting a little more from *Vance v. Vandercook*, so that you can answer?

Mr. NICHOLSON. No, sir.

Mr. CLAYTON. I read just now a sentence from the opinion by Mr. Justice White. Now I will take it up where I left off [reading]:

It is argued that the foregoing considerations are inapplicable, since the State law now before us, while it recognizes the right of residents of other States to ship liquor into South Carolina for the use of residents therein, attaches to the exercise of that right such restrictions as virtually destroy it. But the right of persons of one State to ship liquor into another State to a resident for his own use is derived from the Constitution of the United States, and does not rest on the grant of the State law. Either the conditions attached by the State law unlawfully restrain the right or they do not. If they do—and we shall hereafter examine this contention—then they are void. If they do not, then there is no lawful ground of complaint on the subject.

And again in the same case it is said:

Conceding, without deciding, the power of the State where it has placed the control of the sale of all liquor within the State in charge of its own officers to provide an inspection of liquors shipped into a State by residents of other States for use by residents within the State, it is clear that such a law to be valid must not substantially hamper or burden the constitutional right on the one hand to make and on the other to receive such shipments.

Mr. NICHOLSON. Yes; I simply reiterate the argument that that old decision was made in the light of the interpretation of the Wilson Act, and, as I just said, plainly it would be contrary to the Constitution of the United States for any State to undertake to prohibit the shipment of liquor from one State to another State to be delivered to the consignee, simply because under the terms of the Wilson Act the article shipped possessed an interstate character to the time it got into the hands of the consignee.

The CHAIRMAN. Would not your bill be unconstitutional without the amendment—that is, assuming that the Supreme Court is right when they say you can not deprive a citizen of his right to ship and to receive liquor?

Mr. NICHOLSON. Let me say that the language used by the court in the case of *Vance v. Vandercook*, affirming the right to ship liquors from one State to another for personal use, subsequent to the passage of the Wilson Act, is no stronger than the language used by the court in the original-package decision in affirming the right to ship liquors, even for the purposes of State traffic, when sold in unbroken packages.

Now, I have arrived at that conclusion in my own mind by taking those two things into consideration—reading the original-package decision, and then reading the decision in *Vance v. Vandercook*—and I am impressed with that fact, as I have said, that the language is no stronger in affirming the right to ship liquor in for personal

use, under the Constitution, than it was affirmed in the original-package decision that they had a right to ship liquor in when sold in the original package.

Mr. BIRDSALL. Do you desire to prevent a person from shipping any liquor in for his own use?

Mr. NICHOLSON. I will answer it this way: This committee is not face to face with that question; Congress is not asked to prohibit the sale of liquor. It is simply asked to let the whole control of this question rest with the States. And we feel that the people and the States can be trusted to do what is best for its own citizens.

The CHAIRMAN. That is a very ingenious evasion of the question. [Laughter.]

Mr. BIRDSALL. You are here representing the Anti-Saloon League of America, and what I desire to get at is what that league desires.

Mr. NICHOLSON. We would like the unamended bill.

Mr. BIRDSALL. You would desire to prevent a citizen of a State from shipping in liquor for his own personal use? Is that the desire of the league?

Mr. NICHOLSON. I do not think the league has any policy upon that, because it has not been face to face with that in any State of the Union. But we believe that for Congress to step in when it is not an issue and prohibit the States from doing that is not necessary in order to prevent the proposed measure being declared unconstitutional.

Mr. PALMER. Do you think any State would ever pass or ever could pass a law forbidding a man to use alcoholic beverages?

Mr. NICHOLSON. I think it is very doubtful.

Mr. CLAYTON. The question we are dealing with is how far this power to regulate interstate commerce extends and how far you want it to be extended.

Mr. NICHOLSON. I think I covered the first question from my standpoint in the argument I have made here, that the decision in the *Vance v. Vandercook* case was a decision under the Wilson Act. What the league wants in this matter is, that while Congress is taking action on this question it will do it without qualification and leave the States free from untrammelled to do what they desire at any time for the public good.

To my mind, the court in *Vance v. Vandercook* was not declaring that which is an absolute right, which could not be affected by a law of Congress, for there was no such general subject before the court, but it was only declaring the rights existing by virtue of the Wilson Act.

This is more evident, because in the case of *Crowley v. Christensen* (137 U. S., 86) it is expressly stated as a fundamental principle that—

There is no inherent right in a citizen to sell intoxicating liquors by retail; it is not a privilege of a citizen of a State or of a citizen of the United States.

There is another phase of this question, which is perhaps the really difficult one, because it touches the question of personal rights, and we are asked if we intend to deny the use of liquors to the individual. In the first place, that question is not before this committee for settlement, except in the most indirect way, for, as has been said, this bill is not a prohibitory measure. By its own action it does not close a

single saloon, nor does it forbid any shipment of liquor. The only principle involved is that the States shall have complete jurisdiction over the whole liquor question in so far as it affects in any way their own citizens, or, to be more specific, that liquors shipped from one State to another shall immediately upon entry within the State be of the same character as liquors already within the State and subject to the same jurisdiction.

If Congress is to be committed to this principle, why should it qualify its action and say that some liquors shall not be thus subject to State laws? Is Congress afraid to trust the States to do that which they believe the best thing for their citizens? Is there not, in fact, grave danger in a system by which Congress seeks to establish one rule by which the citizens of a State may govern themselves as to personal habits, while the State may establish another standard denying the right of its own citizens to furnish that its people which Congress says the people from another State may furnish? Is it not better, while this subject is before Congress, to do what the people are expecting, viz, leave this whole question to be dealt with by the several States?

It is argued, however, that no State seeks to prohibit the use of liquor by its citizens. Just so; and the time may never come when this will be attempted, but some of them do prevent the sale of liquor, and it is a rare exception, if existing at all, where any State, either by a prohibitory law or by local option, exempts from its provisions the sale of liquor intended for personal use. Would not such a law be a farce? Suppose a State said no one shall sell liquor except it is intended for personal use. What would be the effect except to break up the wholesale business and give a monopoly to the retail trade? Most people buy liquors for their own use.

What an incongruity for Congress to take such action as will enable a State to say, "We will prohibit our people from selling liquors to our people, but we may not prevent certain people of other States from selling the same kind of liquors to our people."

After all, I am not going to run away from the admissions that States forbid the sale of liquor, not because there is any crime in the mere act of sale, but presumably because they regard its use by the people as detrimental to the public good. Were the question one only of personal benefit or injury, then the right to personal use could never be questioned. But when the use is attended by the increase of crime, pauperism, insanity, and public demoralization, then the question of the public good becomes paramount, a fact which this committee and Congress must needs consider if the personal question is to be injected.

Was ever a prohibitory law declared constitutional on the grounds that the mere sale is a crime that might produce pauperism, but not crime and insanity?

In the License cases (5 How., 504) the court said:

It is not necessary for the sake of justifying the State legislature now under consideration to array the appalling statistics of misery, pauperism, and crime which have their origin in the use or the abuse of ardent spirits.

In *Mugler v. Kansas* (123 U. S., 623) we find—

Nor can it be said that Government interferes with or impairs anyone's constitutional right of liberty or property when it determines that the manu-

facture and sale of intoxicating drinks for general or individual use as a beverage are or may become hurtful to society and to every member of it and is therefore a business in which no one may lawfully engage.

In *Crowley v. Christensen* (137 U. S., 86)—

The statistics of every State show a greater amount of crime and misery attributable to the use of ardent spirits obtainable at these retail liquor stores than to any other source.

Finally, let me say that such an amendment will not only complicate the law, but will provide endless opportunities for evading the law. Where is there a court of inquiry to determine the intent or purpose of the shipment, and shall such inquiry be extended to every shipment? Without such investigation there will still exist endless opportunity for boot-legging and the speak-easy, and although the States may reach a solution of this evil, so far as the traffic in their own liquors is concerned, yet the problem will be more difficult if this amendment is incorporated.

MR. BIRDSALL. Now, will you permit me to ask you a question or two?

MR. NICHOLSON. Yes. I shall be glad to answer if I can.

MR. BIRDSALL. I want to understand your theory of this bill, if I can. First, your understanding is that this Littlefield bill surrenders to the State whatever power Congress may have over the subject under the Constitution and leaves the State with supreme authority to deal with the liquor question?

MR. NICHOLSON. Within its own borders.

MR. BIRDSALL. Yes. And having relegated all that power to the State, it is then your understanding that the State would have the power to prohibit a private individual from buying liquor in a foreign State and shipping it to himself?

MR. NICHOLSON. No more so than it would prohibit the delivery of its own liquors to him. What we want to get at is that there will not be any difference in the character of the liquors.

MR. BIRDSALL. What is your understanding of the bill? If it is passed, would it give the States that authority?

MR. NICHOLSON. Yes; but it is another question whether a State would ever exercise it.

MR. PALMER. If the bill does not confer that authority, you are not for it, are you?

MR. NICHOLSON. I only speak personally, because I do not think any action has been taken on that point by the league.

MR. CLAYTON. What is your idea individually?

MR. NICHOLSON. The only benefit would be, as I have already said, that it would break up the storage idea in the express offices and the promiscuous shipment to A, B, C, and so on. So far as I can see, that is the only benefit; but I believe, Mr. Chairman and gentlemen of the committee, that with that amendment in the bill largely the same abuses would go on which go on under the Wilson law.

MR. CLAYTON. Do you not think that the bill which was reported by this committee in the last Congress, as amended, would prevent this storage business that you speak of?

MR. NICHOLSON. Yes; I think so.

MR. CLAYTON. Then what is the objection now to taking that bill, which was reported under Report No. 2337, made at the second session of the Fifty-eighth Congress?

Mr. NICHOLSON. My objection is simply the objection I am making to the amendment to this measure, that it does not do what we believe is sought and ought to be sought.

Mr. CLAYTON. You admit it breaks up the storage room in the State?

Mr. NICHOLSON. Yes.

Mr. SMITH, of Kentucky. And the C. O. D. business?

Mr. NICHOLSON. Yes; that is, this indirect C. O. D. and this business of going week after week and getting liquors in storage there.

Mr. CLAYTON. The only two exceptions in this bill is where the liquor is to be transported through the State and the other is where it comes into the State for bona fide delivery to the actual consumer. Those are the two exceptions. Does it not eliminate all the other evils?

Mr. NICHOLSON. We think not.

Mr. CLAYTON. What other evils would stand? You could not ship the liquor except to transport it from one State to another on bona fide shipment to an actual consumer for his own personal use. Those are the only two exceptions by which liquor is permitted under that amended bill to go from one State into another State.

Mr. SMITH, of Kentucky. He says they abandoned that bill last year because it did not do what they wanted.

Mr. CLAYTON. Do you think we have got the constitutional power in the law, as decided in the *Vance v. Vandercook* decision and the other decision, that we have got the power to go to the extent that you now seem to claim, that we shall construe the power to regulate commerce to mean the power to prevent commerce?

Mr. NICHOLSON. No; I beg pardon. I do not mean to say that, because I say emphatically that this bill does not do anything except relegate the whole matter to the States. It simply turns the whole question over to the States.

Mr. PALMER. The only difference between the Littlefield bill and the bill which the committee reported last year is that the Littlefield bill puts the burden upon the consignee to prove that the liquor is sent to him for his own use and not for sale, and the committee's bill puts the burden of proof upon the Government. Under the Littlefield bill you have a right to ship and deliver the goods to the consignee. Then there is to be no infringement of the common carrier's right to continue to transport such merchandise from without the State to the person residing therein.

Mr. NICHOLSON. Liquor shipped from one State to another without reference to what it is intended for would be subject to the same conditions under the State law that liquors are already subject to within the States.

Mr. CLAYTON. In these two exceptions that I have just mentioned, as was specified last year, it is merely a recognition of two constitutional rights—the right to ship liquor through the State, and the right to ship liquor to a person for his own individual use and make a bona fide shipment for the personal use of the consignee. Do you think we can pass an act in pursuance of the power to regulate commerce that would deprive a person in one State of the right to ship liquor through the State to a destination beyond that State, or that would deprive a citizen of a State of the right to ship into a State

in good faith liquor for his own individual personal use, but not for sale?

Mr. NICHOLSON. That is a question, Mr. Clayton, that we want the States to determine for themselves.

Mr. CLAYTON. You see, we are bound to deal with a question here as to the extent of the power of Congress. There is no use in our passing an act, you know, that will not stand the test of judicial scrutiny.

Mr. NICHOLSON. As to the question of power, Mr. Clayton, I do not believe that there is a shadow of doubt that Congress has the power to go any extent it wants to in relinquishing control of this or any other article of commerce it wants to, and leaving it to the control of the State at any point it may desire.

Mr. CLAYTON. Let me state the converse of our proposition. Suppose we should put into this act a provision to the effect that no State should ship liquor through any other State for destination in a State beyond. Do you suppose that would be upheld?

Mr. NICHOLSON. No; I do not think it would, for the simple reason that it is not within the State in any legal sense, because it came from the State where it once belonged and it is going to another State where it is intended for.

Mr. SMITH, of Kentucky. It is just interstate commerce.

Mr. NICHOLSON. There is no reason why the State should have jurisdiction over it. I doubt if it would be constitutional, because you would then be opening the way for the State to have jurisdiction over an article that it ought to have no business to have jurisdiction over.

Mr. BIRDSALL. Do you not think the cause of temperance would be better subserved by passing a law to which there was no kind of constitutional objection, rather than going into a field where there is doubt and likelihood of litigation?

Mr. NICHOLSON. If there is objection on that score, I think there is objection to this whole bill—constitutionally, I mean.

Mr. PALMER. There seems to be. [Laughter.]

Mr. CLAYTON. You think the whole bill is unconstitutional?

Mr. NICHOLSON. No. What I mean is, if you are going to have the bill overturned on a constitutional point because of this amendment, I think for the same reasons, for the unconstitutionality of it would apply equally to the whole bill itself. In other words, I think the bill would be constitutional as it stands or would be constitutional as amended. I do not think there is any question about that.

Mr. CLAYTON. I understood you to say just now that you thought this bill was unconstitutional.

Mr. NICHOLSON. Oh, no. I said if you are going to say this bill is unconstitutional because the amendment is not put in, then, for the same reason, I think the bill itself would be unconstitutional, because the Congress would not have the power to do one thing more than to do the other thing.

Mr. STERLING. You admit, if this proviso were not in the bill, that it would be unconstitutional?

Mr. NICHOLSON. No, sir.

Mr. STERLING. I understood you to say it would probably be an unconstitutional provision to undertake to not permit a shipment, to send liquor through a State.

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recess until 2 o'clock this afternoon, in order to give the gentlemen an opportunity to do their work.

Mr. NICHOLSON. I request, before you abandon this discussion, that Mr. Sweet be permitted to address you. He would like to say a very few words in closing.

Mr. ALEXANDER. I suggest, Mr. Chairman, if the lady is not through by half-past 12, that she be given an opportunity to continue this afternoon.

Mr. NICHOLSON. I am advised that others have come in, and if some of them would like to be heard I would be glad if they could have that privilege.

Mr. Chairman and gentlemen, permit me to introduce Mrs. Margaret Dye Ellis.

STATEMENT OF MRS. MARGARET DYE ELLIS, OF WASHINGTON, D. C., LEGISLATIVE SUPERINTENDENT OF THE NATIONAL WOMAN'S CHRISTIAN TEMPERANCE UNION.

Mrs. ELLIS. Mr. Chairman and gentlemen of the committee, I am legislative superintendent of the National Woman's Christian Temperance Union. Not being a lawyer nor a logician, I come before you not to bring flashy arguments nor to parry the thrusts of our friends on the other side who see this question from so different a viewpoint from myself and the women I represent.

The Woman's Christian Temperance Union is in favor of the Littlefield bill. I make no apology here for speaking, for I represent the womanhood, the Christian womanhood, of this country, who should be heard and recognized as a potential factor in every interest pertaining to the welfare of humanity. That is why I have come here to speak in behalf of the womanhood who are interested, intensely interested in the passage of this bill, as it affects the home and the home life.

There is no need of my entering into the benefits, as I believe, of total abstinence or of prohibition, nor of the right of women to stand before you, though we come as suppliants, to come here and raise our voices in protest against anything which interferes with the sacred right of happiness and well-being in the home. It is the right of every citizen to protect that home. It is the right of the mother, as far as she can, to protect her home for the sake of her children; and we honestly believe that the business with which this bill deals is the direct enemy of the best and the highest interests of the home and the home life.

That is one reason why I am here this morning. We believe in State rights. We believe in the right of every State to govern itself. We believe in the exercise by the State of its fullest functions, of the police power, for the public safety and the public health; and public morals should be maintained inviolate. We believe that Congress, as far as in its power lies, should help the State rather than hinder it; for the purpose and intention of this bill, as I understand it, is to consider, or to help, or to protect, as far as Congress may, a State which has, by the sacred right of the ballot, outlawed the liquor traffic, the manufacture and sale of alcoholic liquor in their midst. And yet by and under the guise and by the permission of the interstate-commerce law liquor is transported into these States, and this

accursed thing which has been voted out by a majority of the votes of its citizens is sold despite their votes.

Now, this is unjust. We all believe that this is unjust; and what we want is, and what we ask is, that you gentlemen of this committee, who are so familiar with the breadth of the country and its scope and its needs, will take such action as will remedy the evil. We believe that you are ready to give to the people of the United States protection along this line, as was intended when the Wilson Act came before us. We believed in it. So we now come to you. When the Hepburn-Dolliver bill was before you, two years ago, a great many petitions passed through my office, coming to Congress, and those petitions, many of them, were accompanied by letters citing the facts that the writers lived in prohibition territory because of the danger to some one of their families.

I wish I had some of those letters before me now. I have only one to-day, that came from Iowa only a few weeks ago. The most of these letters wound up by asking, "What can we do?" That is what we want to know. The writers are living under prohibition statutes, and yet these shipments come in and upset the happiness and peace and rights of those people.

Here is a letter which came to me the other day from Vanhorn, Benton County, Iowa. [Reads:]

Our county of Benton has no open saloons, but liquor is being shipped in our little town by the United States Express Company. A liquor firm outside the State has secured the names of about one hundred men in our vicinity, and is constantly shipping liquor in original packages to them. The liquor is not ordered, but the firm sends a postal card to each man telling him the package is at the express office, and if he does not wish to pay for it to "please hand this card to some one who would."

And this woman asks, "What can be done?"

I have here a notice that on November 3 a large haul of 216 sealed bottles of whisky was made by the sheriff's deputy at Scarboro Beach, Maine. When seized by him from the express company or transfer company, they were at once libeled and the goods ordered destroyed by the judge. The State claims that the package was left there by the consignee, while the express company claims that the delivery had not been made and would not be made until the consignee received the goods from the company. That is a fine law point for you, gentlemen. [Laughter.]

Here is a picture [producing same] of the American Express Company's room. They call it "the rum room." This is from the Portland Express. I would like to pass it down the table; Scarboro Beach, Maine. They have had a great fight there—a magnificent fight with the illicit liquor traffic.

I thank you very much, gentlemen. I am here to speak for your homes, for the homes that are represented in this Congress of the United States; I am here to speak this morning for protection for the boys that we are trying to raise, and we are trying to keep the accursed thing from coming into the places where it has been outlawed.

Mr. HEXAMER. Now, Mr. Chairman, I would like to introduce Mr. Frank Siebelick, the chairman of the committee of Massachusetts. He has an important engagement, and would be glad to speak for two minutes, if you will permit.

Mr. WARWICK M. HOUGH. Mr. Chairman, I would like to speak for five minutes. I have traveled a thousand miles for the privilege of doing so, and I am obliged to leave the city this afternoon.

The CHAIRMAN. We will hear you in a few minutes. Now, we will listen to Mr. Siebelick, of Boston, for ten minutes.

STATEMENT OF MR. FRANK SIEBELICK, OF BOSTON, MASS.

Mr. SIEBELICK. Mr. Chairman and gentlemen, I will take only five minutes. I represent and am a member of the German-American Alliance, which has thousands of members in Massachusetts; and their position in this matter, I desire to state to the honorable gentlemen of this committee, is that there is no demand for such legislation as this.

You have heard stated the arguments pro and con concerning the constitutionality of the bill that is before you for consideration, and in my judgment, that matter enters into the case. But the policy of Massachusetts at the present time is that we have laws enough. The policy of those with whom I am an humble associate, the policy of the organization of which I am an humble member, is that we have laws enough.

If I might state, though, for the benefit of the honorable gentlemen of this committee and for my friends who are here to-day, that if they ever went through the State of Maine, which it is the intention to allow to regulate for itself matters pertaining to this act, or the several copies which are before you, they would find all the way from Kittery, which is on the State boundary between New Hampshire and Maine, up to Eastport, Me., which is the most extreme eastern port in the United States, and in Bangor, Me., a condition which could not be any worse if it were under a full license system. There are up there, under the existing conditions, more speak-easies, so-called, and more rum shops that are open on Sundays and week days—and we in Massachusetts under a license system do not allow that—than can be found in any other State of its size in the Union, and the way, Mr. Chairman and gentlemen of this committee, in which they would still be allowed to obtain liquor in original packages if you would create an act by Congress would be to ship it in from New Brunswick, which is a part of the British Government, and send it by original packages from there.

I leave it to the wisdom and the sound sense of the gentlemen of this committee whether we have not the constitutional right to regulate the liquor traffic under our own State laws.

I desire to say that in the association of which I have the honor to be in part the representative we have business men, and we have those who went to the front in the Spanish war, men who are trying to bring up their children—and most of them have large families—for the highest citizenship and in conformity with the highest ideals of American citizens. Most of them, seven-eighths of them, are naturalized American citizens, and they are proud of it; but they do feel that it is an infringement upon their personal rights and personal liberty not to be allowed to have liquor sent to them if they may order it, if they should ever live in a prohibitory State, a thing which one of these bills would certainly prevent, notwithstanding the fact that the United States Government heretofore has not permitted the

States to interfere with commerce between the States. This shows you how the law works out in many cases and how it makes hypocrites of men.

For example, the city of Bangor, Me., has issued over 150 revenue licenses. I do not know whether the honorable gentleman from Maine is here to-day or not, but throughout the entire State of Maine those conditions exist. It shows you the farce of the system, and there is no demand for such legislation.

On the contrary, within the past six years the States of Vermont and New Hampshire have thrown up the prohibitory law. The people there in their sound wisdom and good sense saw the farce of that kind of legislation. Never mind how you endeavor to restrict liquor, it will nevertheless be obtained, and it is better to have a system where the intent is to conduct the business on a higher plane, to regulate the sale in an orderly way, than can be done by any prohibitory act which the honorable members of this committee and of Congress may enact in the current session.

In my brief statement I am not only voicing the views of the German-American Alliance of Massachusetts, but if those with whom I am acquainted had learned the purport of this bill—the Hepburn-Dolliver bill—I am sure you would have here to-day from Massachusetts probably as many again as there are in the room at the present time, because they would feel that this proposed legislation would certainly work an injustice on personal liberty.

Mr. HEXAMER. Mr. Chairman, I would like to correct a statement inadvertently made by Mr. Siebelick. The German-American Alliance has a membership of a million and a half, and every member is required to be a citizen of the United States. A man can not be a member of that organization without being a naturalized citizen.

The CHAIRMAN. Now, Mr. Hough.

STATEMENT OF MR. WARWICK M. HOUGH, OF ST. LOUIS, GENERAL COUNSEL FOR THE NATIONAL WHOLESALE LIQUOR DEALERS' ASSOCIATION OF AMERICA.

Mr. HOUGH. Mr. Chairman and gentlemen of the committee, I appear before you as general counsel for the National Wholesale Liquor Dealers' Association of America. I appeared in this capacity before this committee at the last session of Congress when this question was up before, and I am going to ask that the argument which I made on that occasion be incorporated in the proceedings of the hearing at this time, in order that I may not take up any unnecessary time in going over the same questions which I went over with practically every member of this committee at that time. I presume that request will be granted.

Mr. CLAYTON. Have you a copy of it there?

Mr. HOUGH. Yes, sir.

Statement of Mr. Warwick M. Hough, of St. Louis, Mo., general counsel for the National Wholesale Liquor Dealers' Association of America, an organization which comprises the leading distillers and wholesale dealers of the United States.

Mr. HOUGH. Mr. Chairman and gentlemen of the committee, laws which are enacted under our form of government are supposed to re-

flect the sentiment and opinions of the majority represented by the law-enacting body, whether the law-enacting body is a municipal assembly, a State legislature, or the National Congress, but no law is any stronger than the sentiment of the people of the place or locality to which it applies or where it is to be enforced. Where the prohibitory laws of a State or the police regulations of a State in respect to the manufacture and sale of intoxicating liquors truthfully reflect the sentiment of the people where such laws or regulations are to be enforced there is never any difficulty in enforcing them, but where such laws and regulations do not truthfully reflect the sentiment and opinions of the people amongst whom they are to be enforced they are seldom enforced, and in consequence fall into innocuous desuetude and disrepute.

The crusade against the manufacture and sale of intoxicating liquors is the outgrowth of national and State organizations which reflect the sentiment of less than 20 per cent of the people and the voters of the whole United States, though the percentage in particular localities is, of course, very much greater.

All people believe in temperance—temperance in eating as well as in drinking—and the comparatively insignificant number in the United States who erroneously believe that temperance in drinking can be advanced by prohibitory measures frequently secure the assistance in the passage of most drastic laws of many strong advocates of temperance who do not at heart believe in the principles of prohibition. The results indicate, however, that prohibition has been a pronounced failure everywhere it has been attempted, and the strong temperance allies have from time to time abandoned the ultra prohibitionists to work out more satisfactory results through high license and strict regulations.

This bill is an insidious move on the part of these ultra prohibitionists to bring to their aid the strong arm of the Federal Government to accomplish that about the accomplishment of which the moral sentiment in localities where such prohibitory measures now apply is either indifferent or not sufficiently strong to compel an enforcement of such laws. That this is true is apparent not only from our knowledge of the conditions as they exist in such localities, but from the report which was made with this bill when it was reported at the last Congress and the debate which occurred on the floor of the House when it came up for passage.

The bill appears to have been reported at that time unanimously, and while I had at the first session of that Congress requested an opportunity of being heard, if the author of the bill intended to push it, I am informed that it was reported without a hearing, and therefore practically without such a discussion as to its merits as would have disclosed both its real purpose and effect and its viciousness.

While I am prepared to argue at the proper time and place that prohibition without qualification and without limitation is not only unconstitutional, but absolutely antagonistic to every principle upon which our Government was founded and utterly destructive of the natural and inherent rights of man, it is only necessary in connection with this discussion to say that this bill goes further than any prohibitionist has ever attempted to go before, individually or collectively, in enforcing his views upon temperance upon his fellow-men,

and, indeed, this view of the law was disclosed on the discussion of this measure on the floor of the House, wherein it was stated that the sole purpose of the bill was to enable the States to prohibit the carrying on of the business of selling.

The report which was made with the bill in the last Congress states in substance that the effect of the decision of the Supreme Court in the case of *Leisy v. Hardin* (135 U. S., 100) was to deny to the States the right to regulate or prohibit within such States the sale of intoxicating liquors while they remain in the original packages; that to remove the effect of that decision the act of August 8, 1890, was passed, the constitutionality of which was upheld in the case of *In re Rahrer* (140 U. S., 545), but that the purpose of the law was practically destroyed by the decision of the Supreme Court in the case of *Rhodes v. Iowa* (170 U. S., 415), under which decision the States were practically "powerless either to prohibit such sales or to exercise any control or regulation over them," and that it was the purpose of the bill then reported to give the States the right to prohibit such sales in such States, and thus accomplish what was the original purpose of the act of August 8, 1890.

In the debate on the floor of the House Mr. Clayton stated as follows:

In other words, this is simply a proposition to restore to the States in this matter full and ample power to enforce their police regulations against the sale of intoxicating liquors; that is the whole question. (Congressional Record, January 27, 1903, p. 1390.)

In answer to a question from Mr. Bartholdt, as to whether the bill did not go further than that and as to whether it would not prevent the private citizen not engaged in selling from securing for his own table what he might see fit to drink, Mr. Clayton replied:

No, I do not think it goes to that extent; on the contrary, I am sure it does not go to that extent.

In reply to a question from Mr. Kleberg as to whether the bill would prevent the introduction of liquor into the State by a private individual, Mr. Hepburn stated:

I think not, unless it is brought there for some illegal purpose. It is not illegal for the gentleman to carry liquors into the State of Iowa for his own consumption.

And again,

It is the illegal sale of liquor that our statute has been enacted to prohibit.

In reply to a similar question from Mr. Bartholdt, Mr. Hepburn replied:

There is certainly no provision that he may not do that, and no law of the State of Iowa that would prohibit him from doing that.

Other advocates of the bill on the floor of the House spoke to the same purpose, from which it is clear that the view of this committee in reporting that bill was that the bill was designed solely to prohibit, or to enable the States to prohibit, the carrying on of the business of selling intoxicating liquors within their domain, even though they may remain in the original packages.

That this was also the view of the various temperance societies advocating the passage of this bill is apparent from a reference to

Senate Document No. 150, of the present session of Congress, which was printed February 8, 1904, wherein, on page 9, it says that the bill will—

not prevent anyone from buying liquors wherever they are legally sold in his State or out of it, but only prevents liquor dealers outside of a State from invading it to sell "original packages" of liquors to "speakeasies" by the aid of the interstate-commerce powers of Congress. By comparing this law with a sample of State laws following it will be seen that the Hepburn bill does not prevent buying liquors for private use.

And statements to similar effect were made by every speaker, as I recall it, since I have been in this room, except by Mrs. Foster, who frankly admitted that her purpose was to wipe out the manufacture and sale of intoxicating liquors entirely. Either she understands the purpose of the bill better or she is a little more honest in admitting its purpose.

If we can show, therefore, that this right and this power to prohibit the carrying on the business of selling within the State already exist under the laws, and are sufficiently safe-guarded and protected, then we must conclude that our temperance and prohibition friends have been unnecessarily stamped by the decision of the Supreme Court in the case of *Rhodes v. Iowa*, and that there is no necessity for this legislation at all, if it goes no further than its advocates claim. But if we can show, in addition, that the effect of this bill, if enacted into a law, would be to accomplish the very thing declared by all its advocates not to be the purpose of the bill, then surely this committee will not only feel themselves untrammelled by the action taken by this committee in the last Congress, but, in view of the variance between the avowed purposes intended to be accomplished and the effect of this bill, will not hesitate to reject it; and such action may all the more readily be taken in view of the further fact that even if the effect of the bill, as thus disclosed, was the hidden purpose of its promoters, such purpose and effect have been declared by the Supreme Court to be violative of the Constitution of the United States.

Mr. POWERS. Right there, Judge Hough, I would like to ask you a question.

Mr. HOUGH. Certainly.

Mr. POWERS. There is one question in my mind that seems to me to be the entire pith of the question of the constitutionality of the bill, and this is the question I would like to hear you upon. I suppose it will be conceded that the several States surrendered to the National Government the exclusive control over interstate commerce between the several States and Territories, and it is probably conceded that the National Government may not surrender its exclusive control over interstate commerce except by an amendment to the Constitution. Nobody has said that it is the intention to surrender to the States by an act of Congress exclusive control over an article of commerce the control over which is vested in the National Government.

Mr. HOUGH. It is an attempt to delegate a part of the power it possesses under that clause of the Constitution to the extent that it will give the States the right to regulate shipments without necessarily involving the right to sell, and I cover that when I come to it in this argument, and I will be very glad to answer any further questions on

that line when I get through. But I have prepared this with reference to presenting this one point, and I would like to keep this idea in mind which I have started in upon, and would like to keep it continuously in the minds of the members.

Mr. POWERS. Very well.

Mr. HOUGH. Now, on the first point, as to the necessity, since the only difference in the prohibition situation occasioned by the decision of the Supreme Court in the case of *Leisy v. Hardin* was with reference to the sale of intoxicating liquors in such prohibition districts in the original packages, it is to be assumed that such prohibition laws were being, prior to such decision, satisfactorily and adequately enforced in prohibition districts where the popular sentiment really favored such legislation; and it must be conceded that the effect of the decision in the case of *Leisy v. Hardin* was to give the importer of intoxicating liquors the right to sell in such prohibition districts in contravention of the local laws as long as the liquor remained in the original packages.

The Supreme Court of the United States in the cases of *Rhodes v. Iowa* (170 U. S., 412) and *Vance v. Vandercook* (170 U. S., 438) has emphatically declared that the effect of the act of August 8, 1890, known as the "Wilson Act," was to remove the protection which the interstate-commerce clause of the Federal Constitution and the failure of Congress to legislate thereon had thrown around original packages, in so far as the right to sell or carry on the business of selling in the prohibition districts was concerned.

In the latter case the court says (p. 445):

It is also certain that the settled doctrine is that the power to ship merchandise from one State into another carries with it, as an incident, the right in the receiver of the goods to sell them in the original packages, any State regulation to the contrary notwithstanding; that is to say, that the goods received by interstate commerce remain under the shelter of the interstate-commerce clause of the Constitution until by a sale in the original package they have been mingled with the general mass of property in the State. This last proposition, however, whilst generically treated, is no longer applicable to intoxicating liquors, since Congress in the exercise of its lawful authority has recognized the power of the several States to control the incidental right of sale in the original packages of intoxicating liquors shipped into one State from another, so as to enable the States to prevent the exercise by the receiver of the necessary right of selling intoxicating liquors in original packages, except in conformity to lawful State regulations.

In other words, by virtue of the act of Congress, the receiver of intoxicating liquors in one State sent from another can no longer assert a right to sell in defiance of the State law in the original packages, because Congress has recognized to the contrary. The act of Congress referred to, chapter 728, was approved August 8, 1890, and is entitled "An act to limit the effect of the regulations of commerce between the several States and with foreign countries in certain cases." It reads as follows: (Here follows the act.) The scope and effect of this act of Congress have been settled in *In re Rahrer* (140 U. S., 545), and *Rhodes v. Iowa* (ante, 412). In the first of these cases the constitutional power of Congress to pass the enactment in question was upheld, and the purpose of Congress in adopting it was declared to have been to allow State laws to operate on liquor shipments into one State from another, so as to prevent the sale in the original package in violation of State laws.

In the second case the same view was taken of the statute, and although it was decided that the power of the State did not attach to the intoxicating liquors when in course of transit and until receipt and delivery, it was yet reiterated that the obvious and plain meaning of the act of Congress was to allow the State laws to attach to intoxicating liquors received by interstate commerce shipments before sale in the original package, and therefore at such a time as to prevent such sale if made unlawful by the State law.

This citation and the decision in the case of *Rhodes v. Iowa* ought to clearly settle my first proposition.

They at last clearly demonstrate that the effect of the Wilson Act was to restore the situation or the condition of things as they existed prior to the decision in the case *Leisy v. Hardin*, in so far as the right of a State was concerned to prohibit the sale of intoxicating liquors at any place within the State. This being so, it is demonstrated that the reasons which were given in the report of this committee at the last Congress as to the necessity for the proposed legislation did not in fact exist; they existed only in the stamped imagination of the prohibitionists.

There is no reason therefore why the prohibition laws in the various States of the Union should not be as vigorously enforced to-day as they ever were prior to the original-package decision. If they were not so enforced it must be due to the lack of moral sentiment behind those laws to stimulate which this national legislation is sought.

Such being the state of the law with reference to the right to prohibit sales, it occurs to me that the real grievance of the prohibitionists is not against the interstate-commerce clause of the Federal Constitution or any clause of the Constitution, but against the law of "sales."

Roughly speaking, a sale is a contract, and a contract is a meeting of the minds, and therefore the sale is effected at the place where the minds meet.

Applying these principles of the law of sales, the United States circuit court of appeals of the fifth circuit decided, in the case of *De Bary v. Souer* (101 Fed. Rep., 425), that where a wholesale liquor firm located in the city of New York received at their place of business orders for liquor, and accepts them there, the sale is made there and not elsewhere, no matter where the goods may be delivered. This was the case, I may state, brought against the United States involving the recovery of a tax paid under the internal-revenue laws which had been assessed for carrying on the business at another place than New York; and all these cases to which I am calling attention are cases that have arisen under the United States internal-revenue laws. The Department is enforcing these laws, seeking as far as possible to require people who are carrying on the business of selling to pay the special tax to the Government for carrying on such business.

To the same effect is the judgment of the United States circuit court of appeals for the ninth circuit in the case of *United States v. Chevallier* (107 Fed., 434), wherein it was held that where a wholesale liquor dealer located in San Francisco receives orders from his traveling salesman in Oregon which are accepted and filled at the place of business in San Francisco the sale is made and the liquor is sold in San Francisco and not in Oregon.

To the same effect is the judgment of the United States court in Iowa in the very case referred to in the argument on the floor of the House by Judge Smith in the last Congress.

The liability for the special tax under the United States internal-revenue laws is for carrying on the business of selling, and it has been held under those laws that making a single sale incurs the liability. See *Ledbetter v. United States* (170 U. S., 606).

The case in question is that of the *United States v. Adams Express Company* (119 Fed., 240).

In this case the Adams Express Company was indicted in Iowa under the United States internal-revenue law for carrying on the business of selling liquor without having paid the special tax on account of carrying what is known as a C. O. D. shipment from Dallas, Ill., to Birmingham, Iowa. The court in that case held that the interstate-commerce clause of the Constitution was not involved, and the only question was whether the defendant by carrying such a shipment and receiving the purchase price had sold the liquors.

The decision of the court was that the sale had been made by the party who delivered the shipment to the express company in Illinois, and that that conclusion of the court was in perfect harmony with the decisions of the supreme court of Iowa itself, stating the law of "sales."

In other words, it holds that the general principles as to the place where a sale is made are not affected by the fact that the payment is to be in cash when delivered.

To the same effect is the judgment of the United States court in Kentucky in the case of *United States v. Parker* (121 Fed., 596), which was also a case of C. O. D. shipment.

And, finally, to the same effect is the very recent decision of the Supreme Court of the United States in the case of *Norfolk and Western R. R. Co. v. Sims*, decided December 7, 1903, and reported in No. 4 of the advance sheets of the October term, January 15, 1904.

In that case the Supreme Court says:

A sale really consists of two separate and distinct elements. First, a contract of sale which is complete when the offer is made and accepted; and second, a delivery of the property which may precede, be accompanied by, or followed by the payment of the price as may have been agreed upon between the parties. The substance of the sale is the agreement to sell and its acceptance.

And though the shipment was a C. O. D. shipment, the court held that the sale was made where the order was received and accepted.

Such transactions as are referred to in these authorities can not offend against the police regulations of any State which are limited to prohibiting the selling or the carrying on of the business of selling intoxicating liquors in such State, and no State legislation can have any effect upon or control such a transaction unless the State legislation can be given extraterritorial force and effect, and any State law which attempts this, with or without the aid of Federal legislation, necessarily abandons the legitimate domain of the police power and enters the realm of interstate-commerce regulations. (*Rhodes v. Iowa, supra.*)

This is an impossible feat, for three reasons; and this brings us to my second position:

First. No State law can possibly have any greater extraterritorial force than any other State law, and therefore if the law of one State should forbid a thing to be done beyond its territorial limits which under the laws of a sister State could or should be done, an irreconcilable conflict instantly arises.

As was said in the case of *Bowman v. C. and N. W. Rwy.* (125 U. S., 465):

In the present case the defendant is sued as a common carrier in the State of Illinois, and the breach of duty alleged against it is a violation of the law of that State in refusing to receive and transport goods which, as a common carrier, by

that law it was bound to accept and carry. It interposes as a defense a law of the State of Iowa which forbids the delivery of such goods within that State. Has the law of Iowa any extraterritorial force which does not belong to the law of the State of Illinois? If the law of Iowa forbids the delivery and the law of Illinois requires the transportation, which of the two shall prevail? How can the former make void the latter?

Second. Independent of this irreconcilable conflict it would amount to regulating to interstate commerce on the part of the State over and above the enforcement of any police regulation. This the State can not do, nor can such power be delegated by Congress.

As was said in the case of *In re Rahrer* (140 U. S., 560):

It does not admit of argument that Congress can neither delegate its own powers nor enlarge those of a State.

And third, because it would have the effect of abridging the personal right guaranteed by the Constitution itself of bringing into a State wines or liquors for one's own use.

In the case of *Vance v. Vandercook* (170 U. S., 438) the Supreme Court, in holding that part of the South Carolina dispensary law unconstitutional which interfered with the right of a citizen to ship into the State for his own use and in holding the rest of the law constitutional, said, discussing the rest of the law:

But the weight of the contention is overcome when it is considered that the interstate-commerce clause of the Constitution guarantees the right to ship merchandise from one State to another and protects it until the termination of the shipment by delivery at the place of consignment, and this right is wholly unaffected by the act of Congress which does not allow State authority to attach to the original package before sale, but only after delivery.

Scott v. Donald, *supra*; *Rhodes v. Iowa*, *supra*: It follows that under the Constitution of the United States every resident of South Carolina is free to receive for his own use liquor from other States, and that the inhibitions of a State statute do not operate to prevent liquors from other States from being shipped into such State on the order of a resident for his use. This demonstrates the unsoundness of the contention that if State agents are the only ones authorized to buy liquor for sale in a State, and they select the liquor to be sold from particular States, the products of other States will be excluded. They can not be excluded if they are free to come in for the use of any resident of South Carolina who may elect to order them for his use.

The products of other States will be, of course, excluded from sale in the original packages in the State, but as the right of the State to prevent the sale in original packages of intoxicants coming from other States, in consequence of the State law forbidding the sale of any but certain liquor, attaches to the original packages from other States by virtue of the act of Congress, the inability to make such sales arises from a lawful State enactment. To hold the law unconstitutional because it prevents such sales in the original package would be to decide that the State law was unconstitutional because it exerted a power which the State had a lawful right to exercise. Indeed, the law of the State here under review does not purport to forbid the shipment into the State from other States of intoxicating liquors for the use of a resident, and if it did so it would upon principle, and under the ruling in *Scott v. Donald*, to that extent be in conflict with the Constitution of the United States.

It is argued that the foregoing considerations are inapplicable, since the State law now before us, while it recognizes the right of residents of other States to ship liquor into South Carolina for the use of residents therein, attaches to the exercise of that right such restrictions as virtually destroy it.

But the right of persons in one State to ship liquor into another State to a resident for his own use is derived from the Constitution of the United States, and does not rest upon the grant of the State law. Either the conditions attached by the State law unlawfully restrain the right or they do not. If they do—and we shall hereafter examine this contention—then they are void. If they do not, then there is no lawful ground of complaint on the subject.

It further appears that the right to ship for private use was conditioned upon obtaining a certificate from a chemist, and the court held that this was an unlawful restriction upon this constitutional right to ship for private use, and therefore void.

But it is worthy of note that the holding of the balance of the dispensary law of South Carolina constitutional hinged upon the proposition that the right to make an interstate shipment for personal use was founded in the Constitution and not upon any legislative grant. Had it been otherwise, the logic of the opinion is that the entire law would have been held unconstitutional.

Now, we have already seen that so far as the right and the power to prohibit sales of intoxicating liquors in prohibited districts is concerned, the present laws are not only ample, but are precisely what they were before the alarming original-package decision was rendered, and furthermore, that they are all sufficient to accomplish the purposes alleged to be accomplished by this bill. There is therefore no necessity for this law.

It only remains for us to see whether the proposed law goes beyond those purposes and falls within the condemnation of the authorities cited.

Under the construction of the law in the case of *Rhodes v. Iowa* a citizen of Iowa is entitled to receive an interstate shipment of liquor, and the police power of the State can not touch it before it is delivered to him. If he has ordered it for his own use he can consume it, but if he has ordered it to sell, a State law is violated when he sells, and it only remains for the local authorities to enforce the law against him for so selling.

This natural and reasonable distinction between the right of an individual to receive for his own use and the power of the State to punish him if he sells, even though in the original package, thus establishing a clear line of demarcation between legitimate police regulations and the regulations of interstate commerce, is brought about by the construction given the Wilson Act by the Supreme Court wherein the words "upon arrival in such States" are declared to mean "arrival at the point of destination and delivery there to the consignee."

The proposed law not only inserts the words "before and after delivery" in the present Wilson law, but adds a second section, which in express terms asks that the nonresident shipper and the nonresident common carrier engaged in interstate commerce shall be amenable to the police regulations of the State into which shipments of liquor are made.

It would be hard to conceive of more vicious legislation, because not only does it propose to produce that irreconcilable conflict between State laws, but it proposes to submit interstate shipments to State control without necessarily touching upon the right to sell, the unconstitutionality of which needs no argument to demonstrate.

In the case of *Rhodes v. Iowa*, page 426, the court says:

We think that, interpreting the statute by the light of all its provisions, it was not intended to and did not cause the power of the State to attach to an interstate shipment while the merchandise was in transit under such shipment and until its arrival at the point of destination and delivery thereto to the consignee, and of course this conclusion renders it entirely unnecessary to con-

sider whether, if the act of Congress had submitted the right to make interstate-commerce shipments subject to State control, it would be repugnant to the Constitution.

This is to indicate clearly that an act of Congress purporting to submit such shipments to State control before delivery would be submitting the right to make interstate-commerce shipments subject to State control; but more than this, if the right is given to subject such shipment to State control before delivery, how are the rights of the individual who may ship for his own use protected?

It is alleged by its advocates that this bill would not interfere with such right.

A present law of Iowa, and one which was under discussion in the case of *Rhodes v. Iowa*, is as follows:

If any express company, railway company, or any agent or person in the employ of any express company, or of any common carrier, or any person in the employ of any common carrier, or if any other person shall transport or convey between points, or from one place to another within this State, for any other person or persons or corporation any intoxicating liquors without having first been furnished with a certificate from and under the seal of the county auditor of the county to which said liquor is to be transported or is consigned for transportation, or within which it is to be conveyed from place to place, certifying that the consignee or person to whom said liquor is to be transported, conveyed, or delivered is authorized to sell such intoxicating liquors in such county, such company, corporation, or person so offending, and each of them, and any agent of said company, corporation, or person so offending shall, upon conviction thereof, be fined in the sum of \$100 for each offense and pay costs of prosecution, and the cost shall include a reasonable attorney fee, to be assessed by the court, which shall be paid into the county fund, and stand committed to the county jail until such fine and costs of prosecution are paid.

The offense herein defined shall be held to be complete, and shall be held to have been committed in any county of the State through or to which said intoxicating liquors are transported, or in which the same is unloaded for transportation, or in which said liquors are conveyed from place to place or delivered. It shall be the duty of the several county auditors of the State to issue the certificate herein contemplated to any person having such permit, and the certificate so issued shall be truly dated when issued, and shall specify the date at which the permit expires, as shown by the county records: *Provided, however,* That the defendant may show as a defense hereunder by preponderance of evidence that the character and circumstances of the shipment and its contents were unknown to him.

This law makes no distinction between a shipment to a person for his own use and a shipment to a person who intends to sell the liquor after he receives it. It makes every shipment absolutely unlawful unless the shipment is accompanied by a certificate issued by the proper State officer to the effect that the consignee is authorized to sell. If the consignee is ordering for his own use, he does not want to sell, and could not get the certificate.

It is clear, therefore, that the proposed legislation, in connection with possible State legislation, not only goes much further than the alleged purpose of its advocates, but, as legislation, it would be more objectionable than that under consideration in the case of *Vance v. Vandercook*.

In that case, while the right of the individual was restricted, it was possible to obtain a certificate under which a shipment could be obtained for private use. Under the proposed combination of laws it would be absolutely impossible. And yet, notwithstanding such impossibility, in the case of the South Carolina law the court held that there could be absolutely no restriction upon the right to

ship for private use, because such right rested on the Constitution. Mark you, "on the Constitution," and not on legislative enactment, and, of course, that covers Congressional as well as State enactments. That which is founded on the Constitution can not be abridged by an act of Congress.

In view, therefore, of the premises, from which there seems no escape from the conclusions that there exists no such necessity for this legislation to accomplish only what this is alleged to accomplish, as was thought to exist at the time this bill was reported from the committee in the last Congress, and that even if it were not constitutional that the bill goes much further than was alleged to be its purpose, I ask this committee, How can you be expected to favor it?

It seems to me that the gentlemen of this committee should say to these reformers: Go first to the State and pass a law against drinking, and when you have done that, then come and ask Congress to help you enforce such a provision; because, no matter from what standpoint you approach this question, no matter from what point of view you discuss it, it always resolves itself in the end to the question, "Shall you prohibit the right of the individual to consume or drink what he sees fit?"

SECOND ARGUMENT.

Mr. Chairman and gentlemen of the committee, when I appeared before you last I endeavored to establish three propositions. The first was that the necessity for the proposed legislation which was supposed to exist did not exist in fact. In other words, that no additional legislation was needed to remove any obstacle in the way of the States enforcing their police regulations concerning the manufacture or sale of intoxicating liquors; second, that the practical effect of this measure would be to accomplish only the very thing alleged by all its advocates not to be their purpose; and, third, that the legal effect of the bill is such as has already been declared by the Supreme Court would be unconstitutional. In a subsequent communication to this committee I stated that, if you believed any one of these propositions to be true, I did not see how you could consistently report this measure, and that if you did not believe all of these propositions to be true, it might be due in part to the fact that there had not been a sufficient discussion of them.

I am inclined to believe that every member of this committee believes every one of those propositions to be true, and if I may be mistaken on that point, and there should be any doubt in the minds of any members of this committee, I hope that such doubt may be disclosed by questions or otherwise, because I am here to-day to do all in my power to resolve that doubt into certainty.

Mr. ALEXANDER. How many propositions were there? You spoke of several propositions.

Mr. HOUGH. Three propositions.

Mr. ALEXANDER. Now, will you briefly summarize them? I was not here to hear your remarks the other day, and I would like you to briefly state those propositions.

Mr. HOUGH. First, that the necessity for the legislation which was supposed to exist, which was stated, by the members on the floor, to

exist, which was stated in the report of this committee at the time this bill was reported in the last Congress as existing, did not in fact exist. It had been alleged that it was necessary to have this legislation to enable the States to enforce their police regulations with reference to the sale of intoxicating liquors. I demonstrated that it was not necessary in order to enable the States to enforce their police regulations against either the manufacture or sale of intoxicating liquors within the State.

Second. I stated, and demonstrated, as I believe, that the only effect of the bill would be to accomplish the very thing alleged by all its advocates not to be their purpose.

And third, whether or not the practical effect of this bill was the hidden or secret purpose of its advocates, its legal effect would be such as has already been declared by the Supreme Court would be unconstitutional, as being a delegation to the States of the power to regulate an interstate shipment.

Mr. ALEXANDER. Now, on that last proposition, was your argument along the line of Mr. Sherley's?

Mr. HORGH. I probably took it up where he left off. My argument on that point has been printed, I see, and I am not now following the argument exactly as it was made at that time; but I am proposing to present a few new reasons why those propositions are true, and that can probably best be accomplished by referring to some of the arguments of some of those who have favored this measure.

Recalling what I heard of the oral arguments and what I have read of the printed arguments on this subject, I think possibly the statement of Judge Smith, of Iowa, went more directly to the point than the statement of any of the other gentlemen before this committee on that side, and yet I regret to say that he made hardly more than one statement with which I can agree. That was that the real issue does not involve prohibition or antiprohibition, temperance or intemperance, and in making that admission I submit in all candor that Judge Smith admitted away his entire case. At any rate, he clearly admitted the truth of my first proposition.

When any legislation is suggested which has for its purpose enabling the States to carry into effect prohibition, there is necessarily involved the sociological aspect of that question; but if legislation is suggested which has no bearing upon that proposition, and if legislation is not needed for that purpose, then certainly the sociological view is not involved, and I think I am indebted to the gentleman for making that proposition so clear. Therefore it must be admitted, or considered as admitted, that there is no necessity for the proposed legislation so far as to enable the States to enforce their police regulations against the sale of intoxicating liquors within the States is concerned.

Yet, notwithstanding this statement by Judge Smith, he was illogical enough, later on in his argument, to refer to the conditions which existed in Iowa, and to the necessity of this law to enable them to cope with those conditions, and stated, furthermore, that the purpose of this bill is to accomplish the very thing intended to be accomplished by this committee and by Congress at the time the Wilson bill was reported and passed. Waiving this illogicality, I desire to take issue with that statement of fact, and I feel sure that it was made without due consideration of the arguments which were made

in the House and Senate on that measure, and without due consideration of the action which was taken by this committee at that time.

That bill was introduced in the Senate by Mr. Wilson, of Iowa, in the first session of the Fifty-first Congress, December 4, 1889, and was referred to the Committee on Judiciary. It was reported back May 14, 1890, with an amendment, and debated. The debate in the Senate ran through a period of two months, and the bill finally passed the Senate in the form of the present law.

The incidental right of sale in an original package, contrary to State legislation, was the only phase thought to be reached by the bill, as declared by all its advocates, and Mr. Edmunds, in discussing the effect which the decision of the courts in the case of *Leisy v. Hardin* had had on the business of selling intoxicating liquors within the State and the necessity for the proposed legislation, stated:

Now, Congress proposes to say that the right to import is not to carry the implication of the right to sell against the policy of the State; but if you import at all, you must import, and when you have got it there it must take its chance with all the other property in the State, where the health and safety of the State are concerned.

Now, it is clear from this statement, as well as from the statements of all the others who advocated that measure in the Senate, that the sole purpose of the legislation in the Senate was to cut out the incidental right of sale in the original package, and not to interfere in any degree with an interstate shipment before delivery to the consignee.

Mr. Reed, of Iowa, reported the bill to the House from the Committee on the Judiciary, but instead of reporting the Senate bill, reported as follows:

Strike out all after the enacting clause and insert the following:

"That whenever any article of commerce is imported into any State from any other State, Territory, or foreign nation, and there held and offered for sale, the same shall then be subject to the laws of such State: *Provided*, That no discrimination shall be made by any State in favor of its citizens against those of other States or Territories in respect to the sale of any article of commerce, nor in favor of its own products against those of like character produced in other States or Territories. Nor shall the transportation of commerce through any State be obstructed, except in the necessary enforcement of the health laws of such State."

I call your particular attention to the words "and there held and offered for sale" as indicating clearly that it was not the intent to have the State laws apply until after delivery to the consignee.

Mr. Taylor, in stating the case to the House (p. 7427), said that, under the decision of the Supreme Court in the case of *Brown v. Houston*, it was thought that an interstate shipment became massed with the general property of the State, so as to be subject to the State laws when it had reached its destination in the State, and that the decision of the Supreme Court in the case of *Leisy v. Hardin* had come as a great surprise to lawyers, as well as laymen, in holding that it did not become so massed until after the first sale in the original package. Under that decision he said:

Not only must the property be consigned and delivered in the States, ready for sale and offered for sale, but it must be once sold before interstate commerce ceases and commerce within the State begins.

It is this addition which has made the trouble and which was unexpected.

Now, what was the addition? Only the right of sale in the original package after it had reached the consignee. Could the purpose of Congress and the purpose of this committee be more clearly defined than that? And on the same point. Mr. Reed, of Iowa, said:

I think no one would doubt the power of Congress to enact such a law—that is, a law providing that when intoxicating liquors are carried into that State as articles of commerce they shall be sold only for the purpose prescribed by the statutes of the State and under restrictions similar to those contained in the laws of that State. The pending bill would simply reach the same result in another way. Instead of prescribing, as Congress might, in specific terms the restrictions which shall be imposed upon its traffic, its effect would be to subject it to those restrictions. So that in either case the same result would be reached. The one enactment would as certainly operate as a regulation of the traffic as would the other.

I refer to this statement of Mr. Reed, not as indorsing the legal views expressed therein which may touch upon the question of the power of delegation or the right to delegate a part of the power, but to indicate in connection with everything else that was said by all the members of the House and by all the members of the Senate, in connection with the report of this bill from this committee, that the sole purpose attempted to be accomplished at that time was to cut out the incidental right of sale and not, as was argued by the State of Iowa in the Rhodes case and as has been stated by the advocates of the bill before this committee, to interfere with the shipment before delivery to the consignee.

The House substitute was adopted by the House, and the bill went to conference. The Senate refused to recede, and the House did, and in asking the House to concur, Mr. Reed stated that the only difference between the Senate bill and the House bill was that the Senate bill applied to intoxicating liquors only and the House bill was intended to apply to all commodities.

It is therefore perfectly apparent that all the statements which have been made before this committee to the effect that the proposed legislation is necessary in order to overcome the restricted construction of the Wilson law by the Supreme Court in the Rhodes case and to accomplish what was the original purpose of the Wilson law are not supported by the facts. But it is perfectly clear that the construction given the Wilson Act by the Supreme Court in the Rhodes case accomplishes precisely the purpose which was proposed to be accomplished by the passage of that law.

The position taken by the Prohibitionists, which led to the issue presented in the Rhodes case, was clearly an afterthought, based upon the hope that the language used could be so twisted or distorted as to accomplish something more than the original purpose.

In view of these facts, can any gentleman on this committee any longer claim that the proposed legislation is necessary to enable the States to apply their laws against the sale of intoxicating liquor, or that it is necessary to accomplish what was proposed to be accomplished at the time the Wilson law was passed, or that the Supreme Court, in its decision in the Rhodes case, in anywise restricted that purpose? I think clearly not.

If the purpose of the advocates of this bill, and of the members of the committee who might be inclined to favor it, based upon the statements of those advocates, is sincere, and they mean to accomplish only that, why not report the same bill which was reported by this

committee at that time, and then there will be no doubt about accomplishing what you intended to accomplish at that time?

In answer to questions from Mr. Clayton and Judge De Armond, as to the difference in the wording of the proposed bill and the wording of the Wilson bill, especially with reference to the words "within the boundaries of," Judge Smith stated that there was no difference, or, at least, that he would be very glad to be told what the difference was. It seems to me that the difference is radical. The words in the Wilson law, "shall upon arrival in such State or Territory," taken in their commercial and legal sense, carry with them the idea of destination, whereas the words in the proposed bill, "shall upon arrival within the boundary of such State or Territory," negative the idea of destination, and indicate the purpose to have the State law apply before the shipment reaches its destination in the State, and at any time after it passes the boundary limits. Much was said by both—

Mr. ALEXANDER. Please state when the end of the quotation comes hereafter so we can tell what you are quoting and what is your own language.

Mr. HOUGH. That quotation ended after the word "territory." In fact, both of them did.

Much was said about what any State or any prohibition community would do if such a law was passed; but I desire to state, in this connection, that the proposed legislation must be judged by everything it is possible to do under it, by it, or through it, and not by what probably will be done.

The gentleman declared that it was not the purpose of this bill, or of anybody, to have State laws operate extraterritorially, but in making such statements two views were clearly overlooked. The first is, that if Congress undertakes to permit a State law to operate upon an interstate shipment before the transit is completed, it necessarily has the effect of attempting to give the State laws extraterritorial effect. Such was emphatically declared to be so by the Supreme Court in the Bowman case. But with respect to the proposed legislation we are not to be left in doubt. The difference between the Wilson law and the first provisions of the proposed measure are radical and vital, but there is a section which the remarks of my brother lead me to believe he has never read. It is as follows:

SEC. 2. That all corporations and persons engaged in interstate commerce shall, as to any shipment or transportation of fermented, distilled, or other intoxicating liquors or liquids, be subject to all laws and police regulations with reference to such liquors or liquids, or the shipment or transportation thereof, of the State in which the place of destination is situated, and shall not be exempt therefrom by reason of such liquors or liquids being introduced therein in original packages or otherwise, but nothing in this act shall be construed to authorize a State to control or in anywise interfere with the transporting of any liquors intended for shipment entirely through such a State and not intended for delivery therein.

We can imagine any number of laws of a most sweeping character which might be enacted under this permission, but it is only necessary to refer to an existing law in Iowa to demonstrate its viciousness. I refer to the law which forbids a common carrier from transporting any intoxicating liquors without first having received a certificate; and, mark you, it says first having received a certificate.

Something was said at the last hearing about the possibility of this certificate being obtained by the common carrier after it comes into the State of Iowa, but this second provision proposes to reach outside of the State and control its action where it starts in any other State of the Union.

Mr. ALEXANDER. May I interrupt you there?

Mr. HOUGH. Certainly.

Mr. ALEXANDER. Are you familiar with the Iowa law?

Mr. HOUGH. Yes, sir. I quoted it in my last argument, and it is printed—that is, the Iowa law on this point. I do not know that I am familiar with all the provisions of all the laws of Iowa.

Mr. ALEXANDER. There seems to be some misapprehension in regard to what the Iowa law suggests in regard to liquor imported to a bona fide consignee. What is your opinion?

Mr. HOUGH. I think you mean a bona fide consumer.

Mr. ALEXANDER. A bona fide consumer.

Mr. HOUGH. The law makes no distinction between a consumer and the man who is going to receive for the purpose of selling. The Iowa law——

Mr. ALEXANDER. Now, let me ask you this: Supposing you are a citizen of Iowa, and send to Louisville for a keg of whisky for your own consumption in your own household. Under the Iowa law could that be stopped at the borders of the State?

Mr. HOUGH. If you should pass this bill it would be an attempt to give the State of Iowa permission to stop it at the borders of the State, because——

Mr. ALEXANDER. That is not the point. With the law as it exists at present would it stop it there?

Mr. HOUGH. It would if it had validity, but the Supreme Court of the United States, in the Rhodes case, said that it could not have that effect.

The CHAIRMAN. What you mean is, that when Congress has acted then the Iowa law becomes operative.

Mr. HOUGH. Exactly. If this would be held to be a constitutional enactment, then the State law would become operative, and the effect would be to give the State the power to stop an interstate shipment at the boundary, because the Iowa law draws no distinction in requiring the certificate, which is required to accompany the shipment, between a shipment that is going to be brought there for a man to sell and a shipment that is going to be brought there for a man to consume at his house.

Mr. BRANTLEY. The question is, under the law of Iowa as it exists to-day, if this pending measure is passed and is constitutional, would it have the effect suggested by Mr. Alexander?

Mr. HOUGH. That is what I say; it would have that effect. It would give them permission to stop the shipment that was unaccompanied by a certificate at any time after it had reached the boundary and prior to delivery to the consignee, and the suggestion of Judge Smith that they might have difficulty in catching it is no answer to that proposition, because it does not go to the principle, and laws are not to be passed on the theory that you may not be able to enforce them, but they are to be passed on the theory that they can and will be enforced.

Mr. BRANTLEY. I have not read the decision of the Supreme Court which decided the South Carolina dispensary case——

Mr. HOUGH. The case of *Vance v. Vandercook*——

Mr. BRANTLEY. But I have been told the Supreme Court says that no State can pass a law which will prohibit an individual from importing intoxicating liquors for his own use. Is that a fact?

Mr. HOUGH. Yes, sir. I quoted that case in my last argument here. And they furthermore said that that is a right of the individual which is protected by the Constitution, a right existing prior to the Constitution and protected by the Constitution, and can not be whittled away or legislated away in any way whatever.

Mr. BRANTLEY. Is it not predicated upon the interstate-commerce clause of the Constitution?

Mr. HOUGH. They said it was that clause of the Constitution that protected that right.

Mr. BRANTLEY. Would not that protection apply as much to the man that wanted to consume as the man who wanted to sell—the man who wanted to import?

Mr. HOUGH. Congress has the right to regulate an interstate-commerce shipment. Now, there is a difference between interstate commerce and an interstate shipment, and I refer to a decision in Iowa which explains all that is covered by interstate commerce, which is more than what is covered by the term “an interstate shipment.” Congress has said that the incidental right of sale can be separated from the right to make an interstate shipment, although the Supreme Court had previously said that the incidental right of sale was a part of interstate commerce; and while Mr. Reed, of Iowa, stated that they were surprised, in view of the former decision of the Supreme Court in the case of *Brown v. Houston* (114 U. S.), I say they need not be surprised, if they will read that case a little closer, because it was forecast in that decision that there was a distinction between that kind of a case, which was a case where coal had gone in, involving no question of original package, and a case of where shipment can be made in what can be clearly considered an original package, and they used the words “original package” in the case, and indicated that if it came from a foreign nation it would be protected in that form until after sale. In the *Vance v. Vandercook* case they were discussing “discrimination” as well as the interstate-commerce clause of the Federal Constitution. The point was made that the dispensary law of South Carolina was invalid because it restricted the right of individuals from the different States to ship into the States.

Mr. ALEXANDER. The point there was that they first had to go to the dispensary officers.

Mr. HOUGH. Yes; they had to go to the dispensary officers and get a certificate of purity.

Mr. ALEXANDER. And the nonresident had to go to the officer of the State before he could ship it on. That was in *Vance* against *Vandercook*.

Mr. HOUGH. Now, if there had not been this right of the individual to his ship in for his own use, the dispensary law of South Carolina would not have been declared unconstitutional as being discrimination, not particularly as violating the interstate-commerce clause,

but as being discrimination against the citizens and the products of citizens of other States.

Mr. HENRY, of Texas. That is, class legislation?

Mr. HOUGH. Yes; and the Supreme Court says that, since that rights exists, an individual can order his liquors from any State in the Union, and that right can not be hampered in any way, and the court says, in the opinion, that it will refer to the question of restriction later. Now, then, when they come to it later they find that a citizen, according to the laws of South Carolina, had to get a certificate of purity; he had to get a sample of his proposed shipment.

Mr. ALEXANDER. From the State chemist?

Mr. HOUGH. He had to submit it to the State chemist and get a certificate of purity. Now, the Supreme Court declared that part of the South Carolina dispensary law unconstitutional, because, they said, that right could not be hindered in any way whatever or impeded.

Mr. ALEXANDER. Now, Mr. Hough, when Judge Smith was speaking I asked him this question:

Under this bill would not liquors be stopped at the border of Iowa?

And he replied:

They certainly would not and could not be, unless they were imported for sale, because there is no law of Iowa, and never has been any law of Iowa, which made liquors contraband.

Mr. HOUGH. He is mistaken. The law of Iowa to which I referred this committee provides that before any common carrier—he probably overlooked this law, which applies to common carriers as distinguished from laws which might apply to the individual—that law says that no common carrier can transport in the State any intoxicating liquors unless he first receives a certificate, which must accompany the bill of lading, to the effect that the consignee is entitled to sell. The law of Iowa does not say anything about the right to consume at all; it makes no such distinction. In every case of a shipment of intoxicating liquors there must be that certificate that the consignee has the right to sell. And if a man is receiving for his own use and does not intend to sell, he could not get a certificate. Therefore, the shipment could not be accompanied by a certificate, and, therefore, it could not only be seized under the laws of Iowa, if this bill should be passed, but it could be seized at any time before delivery to the consignee, even before it reaches the town or city of its destination—any minute after it passes the boundary of the limits of the State—because it has not accompanying it that certificate which it is impossible for the man to get, because he does not intend to sell it. So, if you could physically carry out the law you could stop that shipment, and Judge Smith, in my opinion, did not answer your question correctly.

Mr. SMITH, of Kentucky. Will you embrace that provision of the Iowa law in your remarks?

Mr. HOUGH. I am sure it was in my last remarks, but I can not find it.

The CHAIRMAN. Your remarks were printed, and if you included it in your remarks you will probably find it there.

Mr. ALEXANDER. Just see if it is in your last remarks.

Mr. HOUGH (after examination of printed document). It is; here it is.

Mr. ALEXANDER. What is the page?

Mr. HOUGH. Page 65. I will read the law, and you will note that it does not distinguish between the consignee who is going to receive for his own use and a consignee who is going to receive for sale; but, for the reason which I am going to give you a little later, that makes no difference with respect to the proposed legislation, because until Congress passes a law prohibiting the shipment of intoxicating liquors from every State in the Union, a common carrier is bound to deliver to the consignee without reference to what his purpose is in receiving, and the shipper in every State in the Union is entitled to have that shipment delivered under the laws of his own State and the Constitution of the United States, in the absence of such prohibition by Congress against the shipment from every State. I say I will get to that later. I will read this law now [reading]:

If any express company, railway company, or any agent or person in the employ of any express company, or of any common carrier, or any person in the employ of any common carrier, or if any other person shall transport or convey between points, or from one place to another within this State, for any other person or persons or corporation any intoxicating liquors without having first been furnished with a certificate from and under the seal of the county auditor of the county to which said liquor is to be transported, or is consigned for transportation, or within which it is to be conveyed from place to place, certifying that the consignee or person to whom said liquor is to be transported, conveyed, or delivered is authorized to sell such intoxicating liquors in such county, such company, corporation, or person so offending, and each of them, and any agent of said company, corporation, or person so offending shall, upon conviction thereof, be fined in the sum of \$100 for each offense.

And so forth. I need not read more. The offense is deemed to be complete, and shall be held to have been committed in any county of the State through or to which said intoxicating liquors are transported. It can be prosecuted in any county of the State through which the shipment has gone.

Mr. LITTLE. That seems to meet your contention?

Mr. HOUGH. It meets it fully, and I say, in determining or discussing the legal effect of any law, you must assume everything that is possible to be done by State legislation; but so far as Iowa is concerned, we do not have to assume; we simply take the law as it exists.

Mr. ALEXANDER. Now, Mr. Hough, would these words which I will read put it within the case of Vance against Vandercook: "Without having first been furnished with the certificate from and under the seal of the county auditor of the county?"

Mr. HOUGH. If you require a man to get a certificate at all, even where he is going to receive it for his own use, it would be declared unconstitutional, according to the rule in *Vance v. Vandercook*. You can place no restriction on that right at all, if I understand your question.

Mr. GILLET, of California. Because they might refuse a certificate?

Mr. HOUGH. Yes; and there are any number of other reasons.

Mr. ALEXANDER. In *Vance v. Vandercook* the court said the South Carolina act compelled a resident of the State who desired to order liquors for his own use to first communicate his purpose to the State chemist, and it deprived a nonresident of the right to ship into a State unless authority was previously obtained from the officers of the State, and that these conditions are wholly incompatible with the

existence of the right which the statute itself acknowledges. That was in the case of *Vance v. Vandercook*.

Mr. HOUGH. Yes, sir.

Mr. ALEXANDER. Now, with your study of the question, in your opinion, would these words in the Iowa statute, "Without having first been furnished with a certificate from and under the seal of the county auditor of the county," put it on all fours with the statute in South Carolina?

Mr. HOUGH. As it is, it is more objectionable than that provision in the South Carolina dispensary law; but if the law of Iowa attempts to make the distinction between the right to import for sale and the right to import for use, and with that distinction in the Iowa law requiring any kind of a certificate at all, it would be on all fours with the case in the decision referred to.

But, for another reason, I want to call the attention of the committee to the fact that they can not distinguish, they can not apply any law to a shipment before that shipment reaches the consignee, without interfering with the rights of every other citizen in the United States outside of that State, without reference to whether that shipment comes in for use or for sale; and a law of the State of Iowa which attempted to permit it to come in and be delivered to the consignee, provided it was going to come for his own use, but which would prohibit it provided it was going to come for sale, and which should undertake to submit that question of fact to any jury in the State, would be declared to be unconstitutional, as much so as the proposed bill, because it can not be interfered with on any condition until Congress undertakes to prohibit the shipment from a sister State. I will explain that when I get a little further on.

Mr. ALEXANDER. I would like to hear that last sentence again.

Mr. HOUGH. No law of the State of Iowa would be constitutional, and Congress could not, by any legislation, give effect to a State law which would have the effect of interfering in any way with an interstate shipment prior to its delivery to the consignee, even if it went for the purpose of sale, until Congress should pass a law prohibiting such shipments from every State.

The CHAIRMAN. Now, to get at the matter practically, the very things that Judge Smith complains of could be prohibited under the laws of Iowa since the passage of the Wilson bill?

Mr. HOUGH. There is no question about it.

The CHAIRMAN. There is no legal embarrassment?

Mr. HOUGH. Not the slightest.

The CHAIRMAN. It is not the assistance of Congress that they need—

Mr. HOUGH. They ask Congress to help them because of the failure of the State agencies to enforce their laws.

The CHAIRMAN. I agree with you on that proposition.

Mr. HOUGH. And the only benefit to prohibition legislation in the States which could possibly come from any legislation of this kind would be analagous to the benefit which a community would derive by cutting off the head of a man to keep him from stealing.

The CHAIRMAN. The Supreme Court of the United States is unanimous on this proposition: That it is not within the power of Congress to prohibit the transportation of liquor into a State when it is ordered by a bona fide consignee.

The CHAIRMAN. No; it does not make any difference, in my judgment, about that.

Mr. HOUGH. It does not make any difference?

The CHAIRMAN. If he sends for it.

Mr. HOUGH. If he sends for it.

The CHAIRMAN. If he sends for it, the Supreme Court says unanimously, "You can not prohibit it, and it is not within the power of Congress to stop it." Do you agree with me on that proposition?

Mr. HOUGH. Unless you pass a law—and I do not want to express any legal opinion on that proposition—unless you pass a law which says in express terms that there shall be no shipments from any State. If you leave that open, then, the Supreme Court has said, you can not pass a law which will have the effect of giving the State the right to interfere with any interstate shipment prior to delivery.

The CHAIRMAN. The difference between your mind and mine on this question is this: I understand from your argument, you say that it is within the power of a man in Kentucky to ship it to Iowa indifferently, without reference as to whether there is a bona fide consignee there or not.

Mr. HOUGH. No, sir; I do not say that.

The CHAIRMAN. Then I misunderstood you.

Mr. HOUGH. I say that if the man in Iowa received the liquor in advance of a bona fide order sent to the place of business in Kentucky, that that is a sale in Iowa, and not a sale in Kentucky.

The CHAIRMAN. And absolutely forbidden by the laws of Iowa, and all they have to do is to enforce the law they have there.

Mr. HOUGH. All they have to do is to enforce their law. Now, if a man in Kentucky receives an order in Kentucky for a shipment, he can send that order under the present state of the law—that is, the Federal law; he can fill that order and send that shipment to Iowa, and you can not, by this bill, or any bill like it, authorize Iowa to interfere with that shipment before it reaches the consignee. When it reaches the consignee, under the laws of Iowa, he is then forbidden to sell it, and it is the business of the officials in Iowa to step in then and enforce their prohibition regulation against selling, and they have ample authority to do that, under the construction given the Wilson Act by the Supreme Court in the Rhodes case.

Mr. GILLETT, of California. Then your position is, Mr. Hough, that in the absence of an act of Congress prohibiting a transportation of intoxicating liquors, a general law, that there is a perfect right to ship them, where a contract is entered into, from one State to another?

Mr. HOUGH. More than that; you can sue the railroad company if it fails to deliver.

Mr. GILLETT, of California. Yes.

Mr. HOUGH. And you are enforcing a right not by the laws of Iowa (because that right is not based on the law of the forum, but the law of the place where the contract is made), but you are enforcing that right under the laws of Kentucky or New York, and the Constitution of the United States, and the railroad company, then, is in an embarrassing position.

The CHAIRMAN. And the law to-day is exactly the same as it was when the Wilson bill was passed?

Mr. HOUGH. Precisely.

The CHAIRMAN. There has been no change?

Mr. HOUGH. You mean the Federal law?

The CHAIRMAN. Yes.

Mr. HOUGH. Precisely, and they are to-day in precisely the same position with reference to the right to enforce State regulations as they were prior to the original-package decision, prior to the time when that distinction was drawn.

The CHAIRMAN. There has been no decision of the Supreme Court of the United States that embarrasses the States in the least?

Mr. HOUGH. Not in the slightest. In other words, I think that the Supreme Court stretched a point to give them the benefit they enjoy to-day, but that is not material to the present discussion.

The CHAIRMAN. To repeat, the Supreme Court of the United States are unanimous on this point: That a person living in Iowa, in an absolute prohibition State, where the sale and manufacture of liquor is strictly forbidden, can not be prevented from sending into another State and having shipped to him liquor as long as he gives the order?

Mr. HOUGH. As long as he sends in the order.

The CHAIRMAN. He derives that right from the Constitution, and that right can not be impaired?

Mr. HOUGH. Precisely.

Mr. BRANTLEY. And from the interstate-commerce clause.

The CHAIRMAN. And from the interstate-commerce clause.

Mr. HOUGH. Both from that clause and from the other clause which prohibits discrimination against the citizens of the various States.

The CHAIRMAN. Then what is there to legislate on, when the advocates of the bill say they do not intend to prevent a man from ordering liquor on his own account?

Mr. HOUGH. Absolutely nothing to legislate for. As I said a while ago, referring to what was said when the Wilson measure was under discussion, they never intended to go any further than to cut out the incidental right of sale, and when the gentlemen say, as has been said every day that I have been here, that the sole purpose of this proposed law is to accomplish only the very thing which was intended to be accomplished by the Wilson law, they are making statements that are not borne out by the facts. When they say that the Supreme Court in the Rhodes v. Iowa case has given a restricted meaning to the Wilson law, I say they are making statements which are not borne out by the facts, and if the construction which was given the Wilson law by the Supreme Court in the Rhodes case accomplishes precisely what every man in the House and Senate said was their purpose in accomplishing when they passed the Wilson law, there is absolutely nothing to legislate upon and no necessity for any further legislation if the gentlemen do not want to interfere with interstate shipments, and they say they do not.

Mr. ALEXANDER. I want to put this in another way. If this bill should become a law, would it prevent any bona fide shipment not intended for sale, but which is transported solely for the purpose of actual delivery to the original consignee for his personal use and consumption?

Mr. HOUGH. Certainly it would, provided they could catch it, but then you must always assume that you can enforce laws.

Mr. ALEXANDER. What was your answer?

Mr. HOUGH. Certainly it would, because it would give them the right to apply a State law to an interstate shipment at any time after it reaches the boundary of the State and before delivery to the consignee.

Mr. GILLET, of California. If it got to the consignee it might be different.

The CHAIRMAN. I do not think we quite agree for the moment. Is this a correct statement of the law? I assume, again, that I am living in an absolute prohibition State, where the manufacture and sale of liquor is absolutely prohibited. Now, if I want to send to Kentucky and have liquor shipped to me, if I order it myself, the question of bona fides does not arise, but the State can not prevent that shipment to me?

Mr. HOUGH. The State of Iowa or that community has no right—

The CHAIRMAN. Or any State?

Mr. HOUGH. Has no right—

The CHAIRMAN. But can a resident of the State of Kentucky, or any person in Kentucky, ship indifferently to the State of Iowa anticipating a customer?

Mr. HOUGH. That constitutes a sale at the place of destination, as has been decided by the Internal-Revenue Bureau, as well as the courts, and could be prohibited or punished by the State laws.

The CHAIRMAN. And it has been decided a number of times by the Supreme Court of the United States?

Mr. HOUGH. Yes.

The CHAIRMAN. When they complain there that jugs of whisky are shipped into Iowa and sold there in that way, all they have to do is to prosecute the parties under the State law?

Mr. HOUGH. There is no question about that.

The CHAIRMAN. And the man that sells that whisky shipped in there in that way is liable, and always has been?

Mr. HOUGH. He always has been.

The CHAIRMAN. Then we agree on the law.

Mr. HOUGH. And I think somebody instanced a case of that kind, where a number of jugs had been shipped to an express officer in advance of sale.

The CHAIRMAN. Judge Smith did, I think.

Mr. HOUGH. Which shows they can enforce it sometimes.

The CHAIRMAN. In Vance and Vandercock and in *Scott v. Donald* it was decided that they can not ship in advance of a customer, and that if they do it constitutes a sale in the State to which the liquor is shipped.

Mr. HOUGH. If it is prohibited in the State, then the State laws would apply in that kind of a case.

The CHAIRMAN. And all they have to do is to enforce the law, and the jugs of whisky have to disappear.

Mr. HOUGH. Exactly.

The CHAIRMAN. I made that statement to a gentleman on the floor of the House when our friend, Judge Smith, was making that statement, when this bill was before the House, that all they have to do is to go on and enforce the laws of the State of Iowa.

Mr. HOUGH. That is what I have said all the time. I said that the

last time I was here, and I say now that every case and every instance which has been cited by every person before this committee as indicating practical operations of dealers in prohibition sections have been cases with which existing laws are amply able to cope, if properly enforced. And, if it is true that the supreme court of Iowa has decided the flat question, as was stated by Judge Smith, that a C. O. D. shipment constitutes a sale at the point of delivery, then Iowa, at least, is in even a stronger position than any of the other States to cope with the evils of which they complain than if that court had not attempted to overrule a principle of law merchant which is supposed to have been established so long "whereof the memory of man runneth not to the contrary."

Mr. ALEXANDER. May I interrupt you with a question?

Mr. HOUGH. Certainly.

Mr. ALEXANDER. It is a much-disputed question among many members of the committee, and I want to get your idea about this. I asked you a moment ago whether, if this bill became a law, it would prevent any bona fide shipment not intended for sale, but which is transported solely for the purpose of actual delivery to the original consignee for his personal use and consumption, and your answer was that it would?

Mr. HOUGH. That is my answer.

Mr. ALEXANDER. Now, I want to ask you, further, whether if the bill contained that proviso it would be constitutional?

Mr. HOUGH. A proviso, you mean, that they could stop it if intended for sale and could not stop it if it was intended for use?

Mr. ALEXANDER. Yes.

Mr. HOUGH. It would not be constitutional, even then, for a reason which I will give you later on, because you can not interject into the case the question of fact as to what is the purpose, and until Congress prohibits absolutely the shipment from every State there exists the right of every shipper in the United States to have his shipments reach the consignee, no matter where he is or what it may be his purpose to do with the shipment after it reaches him.

Mr. GILLETTE, of California. And no matter what the use is to be?

Mr. HOUGH. No matter what the use is to be.

Mr. HENRY, of Texas. You take the broad ground that Congress can not permit a State to interfere with interstate commerce?

Mr. HOUGH. Exactly; that is what it resolves itself into.

Mr. HENRY, of Texas. Can not delegate its power?

Mr. HOUGH. Can not delegate its power.

Mr. BRANTLEY. Referring to this question asked you by Mr. Alexander, your position is that under the law of the State of Iowa as it now exists, if we pass this bill, the purpose and effect of this bill now pending would be that the State of Iowa would prohibit or could prohibit, under the present law, a man from importing liquor for his own personal use?

Mr. HOUGH. Yes, sir; and more—

Mr. BRANTLEY. One minute. But you contend that, even although we passed it, it would be an unconstitutional provision?

Mr. HOUGH. Clearly. This bill would be unconstitutional for these reasons—

Mr. BRANTLEY. And even although we amend this bill by elimi-

nating the man who imports for his own personal use, so as not to make him subject to the State law, that even then it would be unconstitutional?

Mr. HOUGH. Clearly so.

The CHAIRMAN. Why?

Mr. HOUGH. Because you can not interfere with any shipment before it reaches the consignee without trenching upon the rights of every other citizen in every other State than the destination of that shipment.

The CHAIRMAN. Now, your answer shows that we do not understand each other—

Mr. HOUGH. Of course, you understand that a great many of these questions raise questions which I have covered in this address. I am prepared to cover all these in the remarks I have laid out, and, to a certain extent, it flushes me to be asked these questions before I get to them in the line of argument I had laid out. I mean you get at these points before they are brought out in their strongest connection; but I do not object to that.

Mr. ALEXANDER. This is a good time to bring them out.

Mr. HOUGH. I do not object.

The CHAIRMAN. This raises this question: If I am in Iowa, under the conditions heretofore stated, and I give an order to any person outside of Iowa to ship me liquor, no one can question the purpose I have, under these decisions of the Supreme Court of the United States?

Mr. HOUGH. That is correct, and no one can question as to whether I have ordered that liquor to sell it or to use it.

The CHAIRMAN. But under the decision of the Supreme Court of the United States, to-day no man in any State outside of Iowa can anticipate a sale and make a shipment, and if he does it—

Mr. HOUGH. If he does it, that constitutes a sale at the place of delivery, and if there is a law at the place of delivery which forbids or punishes sales of intoxicating liquors, it would apply to that case.

Mr. GILLET of California. Then your position is this: That the laws of Iowa that would prevent a contract being carried out, if entered into in Kentucky, would have extraterritorial force?

Mr. HOUGH. The court said so in the Bowman case.

Mr. GILLET of California. And it would be unconstitutional?

Mr. HOUGH. Yes, sir. The Supreme Court said it in the Bowman case particularly. Therefore, I say that, if you should even try to amend this bill so as to discriminate or enable the State to discriminate between a shipment which it may be alleged is intended for sale, and a shipment which they may think is for private consumption, it would still be unconstitutional if it interfered in any way with that shipment prior to the time when it reaches the consignee, for reasons and authorities that I cite later.

Mr. ALEXANDER. Then you think this bill is unconstitutional, anyhow?

Mr. HOUGH. Clearly.

The CHAIRMAN. If you have no objection, I will ask you to suspend now, because, under our rules, we take a recess at this hour.

Thereupon, at 12.30, the committee took a recess until 2 o'clock p. m.

AFTERNOON SESSION.

The committee met at 2 o'clock p. m., Hon. John J. Jenkins in the chair.

STATEMENT OF MR. W. M. HOUGH—Continued.

Just before recess I had reached that point of my statement where I referred to a remark of Judge Smith, of Iowa, in reference to a decision in that State on the C. O. D. question, and I stated that if it were true that the supreme court of Iowa had decided the flat question that a C. O. D. shipment constituted a sale at the point of delivery, they were in a better condition to cope with the evils complained of than any other State. I am inclined, however, to doubt that the supreme court of Iowa has decided the flat question in any such way, and I am inclined to believe that there was some other element in the case than the mere C. O. D. proposition which conduced to the conclusion reached, if, as I say, any such conclusion was reached. I was not able to find any decision of the supreme court of Iowa which covered that proposition, but in the latest volume of reported cases—the latest volume of the Iowa reports, the 117th Iowa—I find the following case, *State v. Hanaphy*, wherein the court decides that where a traveling salesman, whose principal was engaged in the sale of intoxicating liquors in the State of Illinois, solicited and accepted an order for liquor in Iowa, which order was sent to the house in Illinois, and there accepted, and the goods sent C. O. D. from the principal to the buyer, the transaction constituted interstate commerce, and the salesman was not liable to prosecution under an act prohibiting the soliciting and filling of orders.

That is inconsistent with the proposition that a C. O. D. shipment constituted a sale at the point of delivery. It may be that the case Judge Smith had in mind was a case where a shipment was sent C. O. D., and the party to whom it was consigned did not call for it, and the bill of lading was transferred to somebody else, and the other person called and took it. I say it may have been that kind of a case, and if it was that kind of a case, then such facts constituted a sale at the point of delivery, irrespective of the fact that it may have been shipped C. O. D. The supreme court of Iowa, in the *Hanaphy* case, says some further things to which I will refer later on; another proposition which is even more important than this.

It is earnestly and seriously contended that it is not the purpose of this bill to interfere in any way with the rights of an individual, and yet those who assert this willfully or negligently ignore the fact that the distinction drawn by the Supreme Court in the *Rhodes* case as to the time when State laws could first apply to interstate shipments for the protection of health and morals, and the enforcement of their police regulations, without amounting to a regulation of interstate commerce by the States, is absolutely necessary to protect that right of the individual to receive for his own use. If you attempt to give the State the right to make a State law apply before delivery, then, instead of having that right of the individual guaranteed by the Constitution, as was said by the Supreme Court in the case of *Vance v. Vandercook*, you tell him that that right shall be made subject to State law, which may prevent its ever reaching him. This would be

the necessary consequence of saying that an interstate shipment should be subject to State laws before delivery, and that at any time after it reaches the boundary of the State.

In so far as Iowa is concerned, this would be already accomplished by existing laws, because, as I have stated, the requirement of the law of Iowa that a certificate that the consignee has the right to sell must accompany the shipment, absolutely excludes the idea of a shipment for private consumption.

From this statement alone it is apparent that an interstate shipment must continue until actual or constructive delivery to the consignee, and so long as no State proposes to prohibit the right of the individual to drink, no legislation is needed which would apply to a shipment before actual or constructive delivery. When it reaches the consignee, however, he has only the right to consume it, but no right to sell it in violation of the State laws.

The distinction which was drawn by the Supreme Court in the Rhodes case between the time when a State law would apply to an interstate shipment without amounting to a regulation by the State of interstate commerce and the time when its application would amount to a regulation of interstate commerce is necessary, for another reason.

I stated in my former argument that, without appreciating the fact, the complaint of the proponents of this bill was really against the "law of sales," and I cited authorities to show that when a man in the State of Iowa wrote to a firm in New York or Philadelphia, Illinois or Missouri, where the business of manufacturing or selling intoxicating liquors is permitted, and ordered the same sent to him, that that was a sale at the place where the order was received and accepted, and the fact that it was a sale at such place was not affected in any way by the manner of delivery.

There is a right, however, which grows out of such a transaction which belongs to the seller or shipper, and which continues until actual or constructive delivery to the consignee. This is the right of stoppage in transitu, a right which is recognized and in force under both the common and civil law.

Mr. Parsons, in his work on contracts (6th ed.), says:

If a vendor who has consigned goods to a purchaser at a distance finds that the purchaser is insolvent, he may stop the goods at any time before they reach the purchaser. This right is called the right of stoppage in transitu.

The second edition of the American and English Encyclopedia of Law says:

The right of stoppage in transitu is the right of an unpaid seller of merchandise to resume possession thereof after shipment and before actual or constructive delivery to the buyer, or some one claiming under him or for him in some capacity other than that of carrier or middleman for the purpose of securing himself to the extent of the purchase price remaining unpaid against the insolvency of the buyer existing unknown to the seller at the time of the sale or arising thereafter.

This principle clearly indicates that in contemplation of law the transit continues until delivery, and the fact that the transit was an interstate transit can not limit that fact. In every instance the transit must continue until actual or constructive delivery. This is a right which is enforced, not by virtue of the law of the forum, but by virtue of the law of the place of contract.

If, therefore, you attempt to give the State the right to destroy any shipment before delivery to the consignee, actual or constructive, you are attempting to give the State authority to cut out a right which belongs to the citizens of all the other States under the laws of such other States.

Again, the liability of a common carrier continues until delivery to the consignee, though after reasonable notice to the consignee the liability of carrier is transferred into the liability of warehouseman. But this is a legal recognition of the proposition that the transit of goods continues until actual or constructive delivery to the consignee, and that includes storage for a reasonable length of time in the warehouse of the carrier at the point of destination, to give notice to the consignee.

In the case of the *Daniel Ball* (10 Wall., 565) the court said:

In this case it is admitted that the steamer was engaged in shipping and transporting down Grand River goods destined and marked for other States than Michigan and in receiving and transporting by the river goods brought from without its limits; but inasmuch as her agency in the transportation was entirely within the limits of the State, and she did not run in connection with or in continuation of any line of vessels or railway leading to other States, it is contended that she was engaged entirely in domestic commerce. But this conclusion does not follow. So far as she was employed in transporting goods destined for other States, or brought from without the limits of Michigan and destined to places within that State, she was engaged in commerce between the States, and however limited that commerce may have been, she was, so far as it went, subject to legislation of Congress. She was employed as an instrument of that commerce; for whenever a commodity has begun to move as an article of trade from one State to another commerce in that commodity between the States has commenced.

And the same rule applies to the shipment until it reaches delivery; even the express wagon that would deliver the goods from the railway station to the consignee is in that respect engaged in interstate commerce.

Mr. BRANTLEY. Will you read that last clause again?

Mr. HOUGH (reading):

She was employed as an instrument of that commerce; for whenever a commodity has begun to move as an article of trade from one State to another commerce in that commodity between the States has commenced.

The point was made in this case that, inasmuch as the part played in that commerce by that boat was wholly within the State, therefore it was no part of interstate commerce. The rule laid down by the court, as I say, applies at the other end of the shipment as well as at the beginning of the shipment. To continue my quotation:

The fact that several different and independent agencies are employed to transport a commodity, some acting entirely in one State and some acting through two or more States, does in no respect affect the character of the transaction. To the extent to which each agency acts in that transportation, it is subject to the regulation of Congress.

And the doctrine in this case was approved by the Supreme Court in the case of *Norfolk Railroad v. Pennsylvania* (136 U. S., 119).

In the case of *Rhodes v. Iowa* the Supreme Court said:

The fundamental right which the decision in the *Bowman* case held to be protected from the operation of State laws by the Constitution of the United States was the continuity of shipment of goods coming from one State into another from the point of transmission to the point of consignment, and the accomplishment there of the delivery covered by the contract.

That states clearly what the interstate shipment amounts to, where it begins, and where it ends. In the Bowman case there was no question of sale in the original package involved. The contract in such case is, of course, a contract made in another State, under whose laws such a contract is valid, and against the enforcement of which the interstate common carrier could not plead a law of Iowa. His contract—that is, the contract of the common carrier—required him to deliver, and it is enforceable by the laws of the State where the shipment starts.

The Iowa case to which I have referred holds the same thing. In that case, *State against Hanaphy* (117th Iowa Reports, 115), the supreme court of Iowa said:

All these acts—the seeking of the customer by the agent, the soliciting and taking of the order, its transmission to the house in another State, the shipment made, the transportation and delivery to the purchaser in this State—all unite to make up interstate commerce.

Mr. BRANTLEY. In that connection, if it will not interrupt you, was not the law under which Hanaphy was prosecuted merely a statute against the sale of liquor, and they undertook to convict him because he solicited orders for a firm that was out of the State? What I wanted to ask you was this: Whether or not, in your opinion, a State enactment that makes it penal for any person to solicit orders for any person in that State would or would not be constitutional?

Mr. HOUGH. It would be unconstitutional as long as the article is to be regarded as a legitimate article of interstate commerce.

Mr. BRANTLEY. You mean that it would be unconstitutional as applying to—

Mr. HOUGH. To the man who solicits the orders.

Mr. BRANTLEY. For a party outside?

Mr. HOUGH. Yes, sir; for a party outside. It has been decided in a number of cases, and it was recently reaffirmed in the case of *Stockard v. Morgan* (185 U. S., 27), where the Supreme Court says:

All of the cases cited, in the opinion of the court, deny the right of a State to tax people representing owners of property outside of the State for soliciting orders within it for such owners for property to be shipped to people within the State.

Mr. BRANTLEY. The statute I suggested would apply to people within or out of the State, that it should be unlawful within the State to solicit an order for whisky.

Mr. HOUGH. That, so far as it applied to a person outside of the State, would be an attempt on the part of the State to regulate interstate commerce, because the soliciting, as stated in the Iowa case, is a part of interstate commerce, and the soliciting has been declared to be a part of interstate commerce by the Supreme Court in a half a dozen cases. The State of Texas recently undertook to change the law of sale so as to get around that point. It had been held by the supreme court of Texas that the soliciting was a part—that is, the soliciting for a man outside of the State was a part—of interstate commerce; so they passed a law to the effect that if a man solicited an order in County A and the goods were sent pursuant to the order solicited, that it should be considered a sale made within that county. Last month the supreme court of Texas passed on that question, and

they decided that it constituted a sale at the place of shipment, and not at the place of delivery. The court says:

It is insisted that, although this may have been the law prior to the act of the twenty-seventh legislature (p. 262), the effect of that enactment was to change the rule. We reply that it is not competent for the legislature to define a sale and fix its locus regardless of the known rules of law which authorize parties to make their own contracts, making the place of the sale depend on the place where the property is transferred and title passes. Much less is it competent for the legislature to reverse the decisions of the courts upon questions of this character. While that body is supreme in the exercise of its functions, it can no more fix the place of sale of liquors, as between contracting parties, in contravention of the rules of law than it can determine the place of a sale of any other commodity, or that it can define what intoxicating liquors are. If it can do the one, it can do the other, and, as its whim or caprice might suggest, it could define away intoxicating liquors altogether.

Mr. BRANTLEY. Can I ask you this question, then? Is there any way by which a prohibition State can prohibit the business of soliciting orders for the sale of whisky in that State?

Mr. HOUGH. Absolutely none.

Mr. BRANTLEY. It is a part of interstate commerce?

Mr. HOUGH. It is a part of interstate commerce, and until Congress passes a law excluding it from interstate commerce it is protected in that respect as well as in all other respects.

Now, from these different points of view it is apparent that when an interstate shipment has commenced it continues until the shipment reaches the consignee, and this must necessarily be so to sustain the proper relations of all parties under the law.

In determining the character of a statute, we are not to be guided by its framing.

As was said by the Supreme Court in the case of *Reed v. Colorado* (187 U. S., 137):

Certain principles are well settled by the former decisions of this court. One is that the purpose of a statute, in whatever language it may be framed, must be determined by its natural and reasonable effect.

Another is that a State may not by its police regulations, whatever their object, unnecessarily burden foreign or interstate commerce.

Again, the acknowledged police powers of a State can not legitimately be exerted so as to defeat or impair a right secured by the National Constitution any more than to defeat or impair a statute passed by Congress in pursuance of the powers granted to it.

A State law which prohibits or regulates the sale of intoxicating liquors within the State, or which might even prohibit or attempt to prohibit the drinking of such liquors within the State, would be a police regulation; but a State law which would have the effect of interfering in any way with delivery to the consignee of a shipment from a sister State would not be a police regulation, but a regulation of interstate commerce.

Mr. HENRY. Is that the decision, or your argument?

Mr. HOUGH. That is my argument. I state this as the conclusion that I draw from all the decisions, that it would be a regulation of interstate commerce unless it was a legitimate inspection measure, and any Federal legislation which attempts to give to the States the right to apply their laws, other than legitimate inspection measures, to such a shipment prior to such delivery would be attempting to give the States the right to regulate interstate commerce, and that is exactly what this bill attempts to do.

It was furthermore contended that there was no difference between

the proposed legislation and an act of Congress which adopts State procedure for Federal courts in such State in certain cases. This argument, I think, was made by Judge Smith, and the gentleman's reputation as a lawyer is all that entitles this suggestion to serious consideration, for I apprehend that every lawyer present has felt the distinction, even if it has not expressed itself in words in his mind. A fair statement of it would be this: An act of Congress adopting a State procedure is not a delegation of power, because the act is complete in itself, and is not executed by any State agency, whereas an act of Congress purporting to regulate interstate commerce, which requires some action to be done by State agency to determine what such regulation is, is a delegation of the power to the State.

If the premises of Judge Smith were correct in reference to his statement about procedure in Federal courts, it would not have been an adoption of such procedure by Congress, but it would have amounted to a delegation of power to the States to provide or establish such procedure for the Federal courts—a thing which no State has authority to do under its own constitution. His premise, however, was incorrect, because no act of Congress that I am aware of says that the practice in Federal courts shall be governed or controlled by the practice established by the legislatures of the States, but it says that the practice shall conform as nearly as may be, in certain cases, to the practice in similar cases in State courts. This amounts neither to a delegation of authority nor adoption, so far as the Federal action is concerned, but is a direction to the tribunals which Congress has established requiring them to make their rules conform to certain conditions.

Of course, an act of Congress could adopt an act of the legislature of any State, provided it was something which Congress could do under its enumerated powers, and I apprehend that the proper distinction between a case of adoption and one of delegation is that in the first case the act is complete in itself and does not require the activities of the State to give it effect, whereas in the other case the activities of the State agencies are called into requisition in order to determine exactly what shall be the purpose or effect and limitation of the act of Congress.

In referring to the construction given to the Wilson Act by the supreme court of Iowa—and that is what is sought to be accomplished by this proposed bill—the Supreme Court of the United States, in the Rhodes case, said:

But to uphold the meaning of the word "arrival," which is necessary to support the State law, as construed below, forces the conclusion that the act of Congress in question authorized State laws to forbid the bringing into the State at all.

And the construction contended for by the State court in that case is exactly what is sought to be accomplished by the proposed legislation. In respect to that the Supreme Court has said that it would amount to authorizing State laws to forbid the bringing into the State at all. And again, in the same case, the Supreme Court of the United States has said:

We think that, interpreting the statute by the light of all its provisions, it was not intended to and did not cause the power of the State to attach to an

interstate-commerce shipment whilst the merchandise was in transit under such shipment and until its arrival at the point of destination and delivery there to the consignee, and, of course, this conclusion renders it entirely unnecessary to consider whether, if the act of Congress had submitted the right to make interstate-commerce shipments subject to State control, it would be repugnant to the Constitution.

Thus, conceding that if it had had to be construed as applying before delivery, that is exactly what it would have amounted to, and that it would have been repugnant to the Constitution goes without saying, for, as I said before, we do not have to be told whether it will be repugnant to the Constitution for you to delegate authority.

From these two paragraphs it seems to me to be perfectly clear that that court holds the opinion that an act of Congress which attempts to give the State the right to interrupt in any way an interstate shipment before arrival at its destination and delivery to the consignee, actual or constructive, would be submitting the right to a State to regulate an interstate shipment; and what is that, I ask, but delegation?

It seems to me that the trouble with the advocates of this measure is that they have never examined the question except from one standpoint. If they would examine it from all points of a circle around it, they must see the fallacies of their position.

The right of a resident of Iowa, for illustration, to receive an interstate shipment is interminably interwoven with the right of a citizen of any other State to have his shipment to Iowa delivered to the consignee.

Until Congress shall prohibit a shipment from every State this right is guaranteed by the Constitution as well as the laws of the State where the shipper resides, and can be enforced against the common carrier, who is thus put "between the devil and the deep sea." For if he failed to carry out his contract to deliver in accordance with the law of the place where the shipment starts, he can be mulcted in damages, and if he brings it to Iowa in compliance with that contract, without first having received the certificate, which it is impossible for him to get, he is fined and imprisoned. Such would be the effect of the proposed legislation. How, then, can anyone say that you are not attempting to give extraterritorial effect to the laws of Iowa, or any other State to which it may be applied? How, then, can anyone say that you are not attempting to delegate power to a State to regulate and control an interstate shipment?

I am unable to find the least excuse or semblance of justification, either in law or in fact, for the proposed legislation. As I have explained, it is not needed, and it seems to me it violates our sense of propriety and our sense of justice, and it violates the Constitution.

Mr. HOUGH (continuing). In view of these facts and argument, calculated and intended to show that this law as proposed was clearly unconstitutional. I want to call the attention of the committee to two cases which bear upon the second section of Mr. Littlefield's bill with reference to the determination, or the right to determine, where a sale takes place, or the locus of the sale. That question was touched upon, I think, in the case of the American Express Company v. The State of Iowa, in 196 U. S., the particular page being 143, where they said that—

Beyond question the contract and sale and shipment were completed in Illinois.

The right of the parties to make a contract in Illinois for the sale and purchase of merchandise, and in so doing to fix by agreement the time when the condition on which the completed title should pass is beyond question.

This same question was before the supreme court, or the appellate court, of Texas, as given in the forty-fifth volume of the Texas Criminal Appeals, in the case of *James v. The State*, page 592. I have not the volume with me, but have an extract from it.

Mr. CLAYTON. What is the case?

Mr. HOUGH. That is the case of *James v. The State*, on page 592 of the forty-fifth volume of the Texas Criminal Appeals. There it appears that the legislature of Texas undertook to do the very thing that this provision in Mr. Littlefield's bill undertakes to do—to determine that the sale shall be considered to have been made at the place where the delivery is made, irrespective of the contract or intent of the parties. On that point the court said:

It is not competent for the legislature to define a sale and fix its locus regardless of the known rule of law which authorizes parties to make their own contracts, making the place of sale dependent on the place where the property is transferred and title passed. Much less is it competent for the legislature to reverse the decision of the court upon questions of this character.

Mr. PALMER. That is a good-sized court down there to beat the legislature. [Laughter.] I thought the court could construe the law and the legislature should make it.

Do you think the Congress has no power to fix the locus where the sale has been made? If the man shipped a package from Kentucky, for example, ordinarily the sale would take place in Kentucky. But you think Congress has no right to say it was made in Iowa in a case of interstate commerce?

Mr. CLAYTON. Where was it intended to be delivered?

Mr. HOUGH. Suppose I am here in the city of Washington and I make a contract with you in the State of Kentucky. Ordinarily the title would pass either here or in the State of Kentucky. I do not think Congress could make a law which says that the title in that case should be considered as having passed in the State of Minnesota.

Mr. PALMER. Why? Give your reasons for it.

Mr. HOUGH. I say I am only giving you these few authorities on that point.

Mr. PALMER. They do not seem to prove much.

Mr. HOUGH. The Supreme Court of the United States says they have the right to determine by contract that question. I will answer any questions on that point that Mr. Palmer wants to ask, but I don't want the few minutes allotted to me to be consumed by questions.

Mr. CLAYTON. That was in the absence of a statute fixing any particular locus. That left it entirely with the contract, and adjudicated it under the contract without reference to any statute undertaking to define the locus of delivery.

Mr. HOUGH. That is true in the Supreme Court case, but there are certain well-known principles of law that have to be observed by legislative bodies as well as by courts, and I think that is the idea expressed in the Texas decision. I do not think they have the right to do that.

The CHAIRMAN. The time of the gentleman has expired.

Mr. CLAYTON. We interrupted him, Mr. Chairman.

Mr. HOUGH. I did not have all the time I was allotted. I will not be able to come back this afternoon.

The CHAIRMAN. Why?

Mr. HOUGH. I have another appointment—with the Commissioner of Internal Revenue.

The CHAIRMAN. Mr. Palmer insists upon our observing the time for taking recess, and the committee has in fact been pounding somewhat steadily, Mr. Hough, and they have something to do. [Laughter.]

Mr. HOUGH. I appreciate that, Mr. Chairman. But I have come from St. Louis expecting to be heard here, having been invited to be here, and I was not heard when I got here. For that reason, Mr. Chairman, I would ask that I may abridge this statement and incorporate the argument I originally made.

Mr. PALMER. I move, Mr. Chairman, that Mr. Hough's argument be printed.

Mr. HOUGH. May I say one more word?

Mr. PALMER. A thousand, if you wish.

Mr. HOUGH. I listened to the argument this morning, and it seems to be considered by everybody that the original bill is unconstitutional. The Littlefield bill is substantially the same. Since the amendment reported by the committee is designed to protect a constitutional right, and that amendment is not satisfactory to the Prohibitionists, and the bill as drafted was not satisfactory to the committee or the other side, the only thing for the committee to do is to report nothing. [Laughter.]

(Thereupon, at 12.30 o'clock p. m., a recess was taken until 2 o'clock p. m.)

AFTERNOON SESSION.

The committee met at 2 o'clock p. m., pursuant to the taking of recess.

STATEMENT OF MR. SIMON WOLF, OF WASHINGTON, D. C.

Mr. WOLF. Mr. Chairman and gentlemen, although by birth a German, by faith a Jew, and officially the representative of the Union of American Hebrew Congregations for the past twenty-five years in Washington, I appear in neither of these capacities, but simply and purely as an American citizen who has but one ambition, and that is to see that the liberties for which my ancestors and my countrymen fought in common with all faiths shall be preserved intact for all time to come.

For the past forty years (I have been a resident of this city for forty-four years) I have appeared time and again before committees of this character on similar propositions, have fought them as far as my humble abilities would allow, not in opposition to any form of religion, to any form of politics, but simply from the standpoint of American citizenship; and it is not for the first time that I have heard the same arguments that have been advanced this morning on the line of personal liberty, for I care not how much the distinguished man who had the honor of speaking here this morning may claim

that this bill involves no question of prohibition or personal liberty, nevertheless there is nothing else in it, absolutely nothing else.

Representing the Anti-Saloon League of the United States, it would be impertinence on our part to think for a moment these good women and good men, actuated by the purest motives from their standpoint, would be here advocating a bill unless it involved the question of prohibition; and I have been admonished by my reading of history and the classics that when the Greeks come bearing gifts, beware. The very fact that the gentleman who has claimed that there was nothing else in this but law, that there was no desire to close a single saloon or to prohibit anything, is one of the fundamental reasons why I have asked the privilege of speaking at all. It is simply trying to gain by indirection what can not be gained directly. In short, the Congress of the United States in its representative character, representing all the interests of the whole country, are asked to do what has failed to be accomplished by the respective States. It is in absolute line, in accord with that spirit which has actuated a certain portion of our population from the time of the founding of the Republic.

As James Russell Lowell said, the Puritans landed on Plymouth Rock, fell on their knees, and then on the aborigines, and they have been keeping it up magnificently ever since. It is the same spirit that actuated the good preachers from the Northwest that came to Abraham Lincoln and asked the resignation of Gen. U. S. Grant because he drank. And you know the memorable reply of the sainted martyr. He said, "Tell me where he bought his liquor and I will send some to the other generals of the Army." And it is the same spirit that has prevailed to have the canteen abolished in the Army, and never in the history of the American Republic have there been more desertions and more demoralization in the Army of our country than since the abolition of the canteen.

It is the same spirit that wants the introduction of God into the Constitution, the same spirit that declares this is a Christian Government from the sectarian standpoint; it is the same spirit that wants to introduce religion into the public schools; it is the same spirit that wishes constantly to interfere in the personal rights and privileges of the American citizen from a narrow and sectarian standpoint. I am not arguing, as I said, against religion; on the contrary, I am in favor of it. Belonging to a race that has never to my recollection produced any drunkards, and, as Bishop Satterlee said last year in a public address, the Jews furnish no divorces; they furnish an ideal moral home life. I think I can speak by the card that all that is wanted in this country is more liberal doctrine from the pulpit, more liberal home moral education, and then the question of prohibition will settle itself.

As to the law, it would be presumptuous in me, even although I have been practicing law ever since 1861—in the Supreme Court and all the courts of the District of Columbia—it would be presumptuous in me to instruct the Judiciary Committee on the House side of their rights and their functions in regard to this bill. I believe that Congress has no right from any constitutional or any delegated authority to prohibit the commerce of this country. Does anyone for a moment presume that if I to-day buy in the city of Washing-

ton a case of wine or a case of beer and send it to Kansas or Missouri, where I may reside, that by virtue of a law to be enacted there I am prevented from enjoying the inalienable right of an American citizen to eat or drink what God has ordained me to? Why, it is absurd on its very face. And if the law is unconstitutional, the law to be enacted, what is the use of wasting our time? You simply degrade and you jeopardize the very functions for which you are congregated to do your duty as representatives of the American people.

I have found in my experience at home and abroad (I have had the good fortune to represent our country in the land of the Pharaohs) that prohibition laws to prevent crime do not prohibit or prevent. You can enact laws to punish, but you can not enact laws to prevent. You simply instill and create into the human being a system of hypocrisy that is abhorrent to every man and woman of sense and respectability.

The chairman this morning said that some one appeared here and said that he saw more drunken men in the State of Maine than possibly in some other States. I have seen the same condition. Some few years ago I went to Portland to attend a national conference, and when I asked for a drink—and I do drink, but, thank God, I never was drunk; I am temperate in that direction, as I try to be in all other directions—I found more speakeasies in the city of Portland than I had ever seen anywhere else before.

Therefore this whole question is not one, as has been claimed, of pure construction of law or of amendment or of constitutional prerogatives. It is the old question, pure and simple, between those who wish to lead a moral, temperate life, irrespective of law, and those who wish to enforce that by absolute prohibition. There is no use in closing our eyes to the fact that the church organizations and the auxiliary organizations of the churches of the United States are banded together for a common purpose, and we might as well meet the issue first as last. And therefore, representing, as I do, as I have said, not any particular organization, certainly representing no brewer or any liquor establishment, because I am simply here in the capacity of that broad ægis under which all Americans sail—citizenship of our common country—I admonish and beg this committee to heed wisely before legislating in any direction which would be used as a precedent by the State organizations or State legislatures to deprive men of that to which they are entitled.

I thank you, one and all.

Mr. NICHOLSON. I would like to say this: We have two of the Members of the House here who would like to be heard for this bill. We want to try to serve their convenience, because they are very busy. Judge Smith, of Iowa, is here, and can only remain a few minutes, and I would like him to be heard.

STATEMENT OF HON. WALTER I. SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA.

Mr. SMITH, of Iowa. Mr. Chairman and gentlemen, in view of the fact that I have twice appeared before this committee in past years advocating the report of similar measures to those now under consideration, I want to be very brief this afternoon.

I am not able to agree with those good people who appear here to advocate this as a temperance measure or as a prohibition measure. It has nothing to do with temperance or prohibition except in a remote way. I certainly do not agree with those who are here opposing this measure. This measure is simply a measure to return to us that self-government which for fifty years we enjoyed under the decisions of the Supreme Court of the United States. The Supreme Court of the United States held early in the history of this prohibitory legislation that the State had the power to prohibit the sale of liquors there, whether in original packages or otherwise. For fifty years that opinion stood unchanged.

After the lapse of fifty years the Supreme Court of the United States (and far be it from me to criticise it) determined that the former holding was erroneous, that the Constitution of the United States, by conferring upon Congress control of her interstate commerce, had necessarily deprived the States of authority to prohibit the sale of liquors within the States in original packages. The result was the immediate establishment, in defiance of the popular will, in every community in the dry States and dry territory of original-package houses under the Wilson law. If the Wilson law had not received the peculiar construction which it did receive in the Rhodes case nobody would be here to harass this committee further upon this subject.

When the Supreme Court announced that under the Wilson law liquors did not arrive until they were delivered to the consignee no great harm was done and would not have been done if that decision had not at once been grossly abused. I have at my room a letter received within a week from a gentleman stating that at one point in Iowa two dozen jugs were then lying in the station addressed to X or some letter, and that anyone who would go and pay the express charges and the purchase price could take those liquors out. They were thus being retailed in defiance of our laws over the express counter.

Now, it is not a question of whether we are for prohibition or against it; it is a question of whether the people in the respective portions of the United States are entitled to govern themselves; that is all there is in this question. I remember that in one of the national conventions when a question arose as to the manner of selection of the delegation from Illinois a distinguished citizen of Illinois, in protesting against imposing upon the people of Illinois the methods employed in the selection of delegates in Massachusetts, commented upon the fact that the clothes of the people of Massachusetts might be of a better cut than the clothes of the people of Illinois, but they didn't want the clothes of the people of Massachusetts put upon the people of Illinois because they would not fit them so well. So it may be that other regions have better laws than we have in Iowa; other people may be wiser than we are in Iowa; but I don't care to have their laws imposed upon us; our laws suit us.

We would like to have the privilege of regulating our own purely local and domestic laws and not have somebody who doesn't dwell in our midst imposing upon us their laws that we do not approve of. That is all there is here. I repudiate every remark made in support of this bill that advocates it as a temperance measure. I repudiate every remark made in support of this bill that advocates it as a

prohibition measure. I repudiate everything that is said along those lines in support of this bill so far as I am personally concerned. I am here to contend for the right of my people to govern themselves as they see fit. We don't want to govern any place else outside of our communities; we do want to govern our own communities. We want to govern them according to our notions and our ideas. We may not be as bright as people elsewhere; we may not know as well what laws are wise; we may not have as much talent or as much of judgment, but we do know what we want, and we don't like to have somebody else imposing laws in reference to our customs upon us against our consent.

We have learned that we can govern the Philippines without their consent, we can govern people outside of the limits of the United States without their consent, but we still do cling to the old notion that here at home communities ought to be entitled to govern themselves, and that the United States Government ought not to thrust upon and force upon the people of any State a traffic that they do not want conducted there.

Mr. BARTHOLDT. Will you permit a question?

Mr. SMITH, of Iowa. Yes, sir; as far as I am concerned.

Mr. BARTHOLDT. I am not a member of the committee.

The CHAIRMAN. Is there any objection?

Mr. CLAYTON. There is no objection.

Mr. BARTHOLDT. I wish to ask my friend, Mr. Smith, whether the State of Iowa, the State authorities, are enforcing their prohibitory law.

Mr. SMITH, of Iowa. I will say that in my judgment there is not a law upon the statute books more rigidly enforced than the Iowa prohibitory liquor law.

Mr. BARTHOLDT. Is it true that brewers, distillers, and saloons are running open in the State of Iowa?

Mr. SMITH, of Iowa. Nowhere except where authorized by law. I will say, as the gentleman has asked me the question, that I have the honor to represent on the floor of this House nine counties in the State of Iowa. In one of those counties the so-called "mulct law" is in force, which is an authorization for the sale of liquor.

Mr. BARTHOLDT. Which is an immoral compromise between the State and the violators of the law?

Mr. SMITH, of Iowa. I am not here to discuss with my good friend from Missouri the immorality of the laws of Iowa. We would like to make our own laws, without the interference of people who do not live in our midst. You don't approve of our laws; well and good. I have no criticism upon you because you do not believe in our laws or because you have different laws. You ought to have as large charity. These gentlemen—not Mr. Bartholdt, because I know he is too broad for that—but these gentlemen talking against such legislation are all the time talking about hypocrisy and bigotry, and yet they are determined to say not only what the laws shall be in their community, but to come into my community and dictate to us what our laws shall be.

Mr. BARTHOLDT. But my point is this: That before you come to Congress to aid you in the enforcement of your local—

Mr. SMITH, of Iowa. I am not asking any aid from Congress—we are not asking any aid from Congress—

Mr. BARTHOLDT (continuing). You should come here with clean hands. You haven't got clean hands.

Mr. SMITH, of Iowa. You say we haven't got clean hands. You are the one that is judging as to other people. I am not reflecting upon you because you and your people don't agree with me and my people. I am willing to credit you with all sincerity, with all honesty, with all of uprightness, with all of high purpose; but when I want in my community to do what I am willing that you should do in yours—make your own laws and enforce them—I am to be told that my people are a corrupt people, a demoralized people, a people that are not honest, a people that are not sincere, a people who are hypocritical; and that is not true.

Mr. BARTHOLDT. If a saloon runs open in Iowa, that is in violation of the State laws—

Mr. SMITH, of Iowa. It is not.

Mr. BARTHOLDT. In other words, you have not exhausted your State powers.

Mr. SMITH, of Iowa. It is not true; I beg your pardon, you are in error. The truth is, I was about to say, in the nine counties in my Congressional district there is not a single saloon running outside of Pottawattamie County, where the mulct law is in force—and they are to run in Montgomery County—there has not been a saloon running for more than twenty years. I sat upon the bench in that county for ten years myself, and know whereof I speak. The people may be foolish, they may not know what is best for them, they may be misguided, but they would like to govern themselves unhampered in a purely domestic matter like this, by the laws and the Constitution of the United States imposing upon them this traffic against their will. That is all. We would like in our humble way to have the same rights you have got.

Mr. SMITH, of Kentucky. When you undertake to prevent the citizen from another State selling and shipping his product into your State, are not you not only demanding the right of local self-government, but the right to govern somebody outside your State?

Mr. SMITH, of Iowa. Not at all. For years the Supreme Court of the United States said that you had nothing to do with them—

Mr. SMITH, of Kentucky. But it does not say it now.

Mr. SMITH, of Iowa. The Supreme Court says now that without an act of Congress we can not do it, but if you do not pass this act of Congress you affirmatively impose this traffic on communities that don't want it.

Mr. SMITH, of Kentucky. You know that the power of regulating interstate commerce lies with the Congress of the United States?

Mr. SMITH, of Iowa. Yes, sir.

Mr. SMITH, of Kentucky. And until Congress takes the hands off the Federal Government off the State can not regulate it?

Mr. SMITH, of Iowa. That is true—

Mr. SMITH, of Kentucky. And you are asking Congress to take its hands off—

Mr. SMITH, of Iowa. And let us govern ourselves.

Mr. SMITH, of Kentucky. To prevent the people from outside engaging in interstate commerce in that particular article?

Mr. SMITH, of Iowa. No; not real interstate commerce. The sales are made right in Iowa over the counters of the express companies,

two of them having been enjoined by the supreme court of Iowa from engaging in that business.

Mr. BARTHOLDT. And you have opened saloons——

Mr. SMITH, of Iowa. Not except where they are opened by law.

Mr. SMITH, of Kentucky. But you would cut off by this legislation the right of a citizen in Illinois, for instance, to sell and ship his product into your State?

Mr. SMITH, of Iowa. No; we cut off his power to ship and sell it; there is the difference. You said we cut off his power to sell and ship it. We won't do that, but we do cut off his power to ship and sell it. We want to get this thing in the right order.

Mr. SMITH, of Kentucky. It may be that in a good many cases—I am not disputing on that particular proposition—but, on the other hand, I take it that there is a good deal that is sold and shipped, and you would cut that off along with the other.

Mr. SMITH, of Iowa. Personally, I have never been strenuous upon that subject. I think you ought to leave us to govern ourselves as to whether even the liquor shall be drunk in Iowa or not. The State of Indiana has recently passed a law prohibiting the smoking of cigarettes. I think that is a radical law, but far be it from me to say that the people of Indiana shall not govern themselves in that regard if they see fit. The people of Nebraska have recently passed a law making it a criminal offense to wrap a cigarette or to smoke a cigarette.

Mr. PARKER. In the streets, I suppose?

Mr. SMITH, of Iowa. Anywhere. Personally I think that is a piece of very radical legislation, but living, as I do, without their borders I have no purpose to dictate what the laws or the practices shall be either in Indiana or Nebraska.

Mr. PARKER. Mr. Smith, I don't know that it is material, but I would like to know how you manage to get the mulct law in Iowa. I thought the Constitution prohibited it.

Mr. SMITH, of Iowa. No; you are in error about that; there is no constitutional provision on the subject.

Mr. PARKER. Was there not one passed?

Mr. SMITH, of Iowa. There was one voted for, but owing to the lack of properly entering it upon the journal it was held to be illegal by the Supreme Court.

Mr. PARKER. So the legislature has full power?

Mr. SMITH, of Iowa. The legislature has full power, and the people of Iowa have had a prohibitory law since 1851. For over fifty years these "stupid" people have adhered to this policy.

Mr. PARKER. Let me ask you another question, and that is whether the real difficulty in Iowa does not reside altogether in C. O. D. shipments?

Mr. SMITH, of Iowa. No; it resides in C. O. D. shipments, but not in genuine C. O. D. shipments.

Mr. PARKER. If you were to cut off C. O. D. shipments and make it illegal to deliver liquor C. O. D., would you not hit all the blind tigers——

Mr. SMITH, of Iowa. There are no blind tigers there.

Mr. PARKER. I mean the express companies selling goods to A, B, or C.

Mr. SMITH, of Iowa. I should think so; yes.

Mr. PARKER. And if you would limit the law to that you would probably meet the difficulties that now exist?

Mr. SMITH, of Iowa. I think so, in my judgment; but I am not here to concede that the law ought to be less than to give to the people of every State the absolute right to control their own domestic affairs upon this subject.

Mr. PARKER. Then ought not the law to provide that all articles shipped from one State to another ought to be subject, instead of confining it to liquor?

Mr. SMITH, of Iowa. When the Wilson bill passed the Senate, this committee reported as a substitute the bill conferring upon the States police power over every article of interstate commerce, and that bill, I say, ought to have passed; yes. Your committee reported it, and I say it ought to have passed, and it did pass the House of Representatives. That gave every State, in the exercise of its police power, control over all kinds of interstate shipments. I say that if you ship coal oil into my State and that coal oil is of such a low test that it is dangerous to the lives of our people, or that we think so, we ought to be entitled to prohibit the sale of that coal oil in our State.

Mr. PARKER. Are you not able to do that now?

Mr. SMITH, of Iowa. No, sir.

Mr. PARKER. I always supposed that dynamite and explosives and things of that sort, and cattle that had disease, and goods which of themselves were dangerous, would always be subject to police power, wherever they were found.

Mr. SMITH, of Iowa. My understanding is that cattle, being under the quarantine law, can perhaps be excluded from the State; but the very point decided in the *Leisey v. Hardin* case was that the police power did not extend to the prohibition of the sale of goods in original packages, the subjects of interstate commerce.

Mr. PARKER. I am not speaking of the sale; I am talking of the transporting, even of goods which are dangerous in themselves, like dynamite.

Mr. SMITH, of Iowa. Suppose they are not dangerous from their transportation?

Mr. PARKER. The coal oil was dangerous.

Mr. SMITH, of Iowa. Perhaps not; perhaps not in the way in which it is handled in cold-steel tanks; but I suppose it is dangerous in the household. I say the people ought to have a right to prohibit its sale, and that is what the House of Representatives said in the Fifty-first Congress, but the Senate refused, for reasons that may perhaps be surmised by some of us, to consent to the passage of a bill that extended not only to liquors, but other commodities, and we were obliged to accept a bill which applied only to liquors.

Mr. BARTHOLDT. Iowa is in favor of prohibition?

Mr. SMITH, of Iowa. Part of it is.

Mr. BARTHOLDT. And yet the legislature passes what is termed the mulct law?

Mr. SMITH, of Iowa. Yes, sir.

Mr. BARTHOLDT. Now, my point is this. Before you come here to Congress to invoke the aid of the National Legislature to suppress that traffic the legislature of Iowa itself has it in its power to suppress that traffic within its own boundary lines, and yet they have passed the mulct law.

Mr. SMITH, of Iowa. The gentleman is mistaken in numerous points. In the first place, the people of Iowa believe what I am contending for—in the right of local self-government. If the city of Davenport is in favor of the sale of liquors, the people of Iowa allow liquors to be sold there under the mulct law. If the people of Page County are bitterly hostile to the sale of liquors we refuse to let them be sold there.

Now, these liquors are not shipped from Davenport; we have suppressed the shipping of liquors from one town in Iowa where they are sold to the dry communities in Iowa and offering them for sale there over the express companies' counties. We are not asking the aid of Congress to enable us to enforce the laws of Iowa. By a construction the Supreme Court of the United States held that the Constitution gave a right to those sending liquor into Iowa to violate the laws of Iowa until Congress consented to our laws. We will enforce our laws ourselves, we ask you to take your hands off and let us alone to enforce our own laws.

Mr. PARKER. I am trying to get at a few facts; I don't know about these laws. Do these mulct laws allow liquors to be shipped from outside the State into the mulct counties, or do they only allow goods to be manufactured in those counties and sold?

Mr. SMITH, of Iowa. The liquors are shipped in. The law does not specifically provide as to that—

Mr. PARKER. Is not the law a law providing for the sale and manufacture, but not providing for the shipments from other States into those counties?

Mr. SMITH, of Iowa. The law does not ordinarily provide for the manufacture of liquors in counties where the mulct law is enforced.

Mr. PARKER. What does it provide for?

Mr. SMITH, of Iowa. For the sale of liquors.

Mr. PARKER. It provides for the sale of liquors in those counties?

Mr. SMITH, of Iowa. Yes, sir.

Mr. PARKER. But there are other laws in Iowa which prohibit the transportation of liquor by any railroad, I understand?

Mr. SMITH, of Iowa. Yes; a local shipment within the State. We can not prohibit interstate shipments, of course, and we are not seeking to prohibit interstate shipments by this law.

Mr. PARKER. By this law interstate shipments would be prohibited?

Mr. SMITH, of Iowa. Oh, no.

Mr. PARKER. The words are pretty strong.

Mr. SMITH, of Iowa. No. The language does not prohibit—

Mr. PARKER. I am discussing what the Iowa law is. Does it not prohibit carrying any liquors on railroad trains?

Mr. SMITH, of Iowa. Not on interstate shipments.

Mr. PARKER. And do the mulct laws except shipments of that sort?

Mr. SMITH, of Iowa. I would not be able to answer that as to whether they expressly except it or not. I have not seen the law, probably, in ten years. I am somewhat familiar with it, but I don't believe I have read it for ten years; but the mulct law does not seek to build up the Iowa liquor manufacturers, if that is what the gentleman means.

Mr. PARKER. I was trying to get at whether this law subjected all interstate shipments to the police power of the State; whether the

general laws of Iowa with the mulct laws would take hold of this liquor if it was shipped into mulct counties?

Mr. SMITH, of Iowa. I think not.

Mr. PARKER. My impression was the other way, from a casual examination.

Mr. SMITH, of Iowa. I grant you that the question has never been so clearly presented as to have had that definitely settled.

I have always planted myself on the single proposition that all we want you to do is to let us govern ourselves, and we are willing that Mr. Bartholdt and all his constituents should govern themselves. We do think that other States ought not to insist upon imposing their social notions upon us any more than we try to impose our social notions upon them, and if we can only agree that each community shall govern itself in this regard and have the right to govern itself we ought to be able to live together in peace and charity, not calling each other bigots or anything of that sort, but just conceding that there is a difference of opinion in different parts of the country on this great subject, and let every community govern itself according to the moral sense of that community, and no other community attempt to impose its moral ideas upon us. That is all we ask. We don't ask Congress to interfere and help us carry out our laws; we ask you to quit interfering in the carrying out of our laws, and we will take care of ourselves, as we have always been able to do.

Mr. PALMER. You remember last year we reported a bill, which I supposed was satisfactory to everybody, which did not pass. It contained this provision:

Not interfere with the delivery in the State or Territory of any bona fide interstate-commerce shipment of liquor or liquids intended solely for the personal use of the original consignee.

Mr. SMITH, of Iowa. I would much prefer seeing this bill passed with this clause in it, if it was a question of passing it that way or not passing it at all, I mean; but don't see why you should want this clause in. If the people of Indiana are narrow enough to prohibit the smoking of cigarettes by anyone within the State, I don't see why I should insist upon the inalienable rights of some citizens of Indiana to smoke cigarettes.

Can we not let the States take care of their own business and transact their own affairs in these matters? That is the same proposition; that is why I mentioned the question of the law against cigarette smoking. We will next hear that we have to have an act of Congress to protect the people of Nebraska in their inalienable right to smoke cigarettes—that is, that you must put in a clause that they can smoke cigarettes themselves and can bring cigarettes in to smoke themselves. Have we got to rush to the support and defense of the good people of Iowa, who can not take care of the themselves, to preserve to them the right to get liquor to drink?

Mr. PALMER. Do you concede that the citizens of Iowa have a right to buy liquor where they please and take it in there and drink it?

Mr. SMITH, of Iowa. I don't believe a man has the constitutional right to drink liquor at all, as far as that is concerned. I think the legislature has as much right to make it an offense to drink liquor as to make it an offense to smoke cigarettes. The Supreme Court has never held that it was unconstitutional to prevent a man from drinking.

Mr. CLAYTON. Have you read Vance against Vandercook?

Mr. SMITH, of Iowa. I have.

Mr. CLAYTON. Don't you think that covers that?

Mr. SMITH, of Iowa. I do not so regard it.

Mr. PALMER. This right to ship in liquor is derived from the Constitution of the United States.

Mr. SMITH, of Iowa. My dear sir, the right to ship liquors and the right to use liquors are two entirely different things. The right to ship liquor is an act of interstate commerce and protected by the Constitution; the right to drink liquor is not an act of interstate commerce and is not protected by the Constitution, unless a man gets astride the line.

Mr. PALMER. You haven't any law in Iowa now prohibiting a man from drinking liquor?

Mr. SMITH, of Iowa. No; but there is a law in Indiana against anybody smoking cigarettes. Are you going to rush in to get a saving clause to protect the citizens of Indiana in their inalienable right to smoke cigarettes?

Mr. PALMER. When we come to that ditch we will get over it.

Mr. SMITH, of Iowa. Is it not the same thing?

Mr. PALMER. I won't say what I think of the Indiana law, because it would not be polite.

Mr. SMITH, of Iowa. Will you state what you think of the legal difference between a law against smoking cigarettes and a law against drinking liquor?

Mr. PALMER. I think it is worse to smoke cigarettes than it is to drink liquor.

Mr. SMITH, of Iowa. I didn't ask that. The truth is there is no distinction, and you can not find a line anywhere, I think, to say that a law prohibiting people from drinking liquor is not valid. The Supreme Court did hold that there existed a constitutional right to sell it in unbroken packages, but if the law provides that liquor shall not be drunk in a State of course that decision would not cover the drinking of the liquor.

Mr. PALMER. It would be a pretty poor right—the right to ship it in—if he didn't have the right to drink it after he got it in.

Mr. SMITH, of Iowa. May not the Constitution of the United States protect one right and not the other; does not the Constitution now protect the right to ship it in but not protect the right to sell it in broken packages?

Mr. PALMER. I think the right to ship it in implies the right to use it.

Mr. SMITH, of Iowa. Under the Wilson law now we have a right to prohibit a sale—that is, sales in the ordinary course of trade in the State in the original packages.

Mr. PALMER. Would you be satisfied with the bill reported unanimously last year?

Mr. SMITH, of Iowa. We are dissatisfied in one sense, but we were glad to get a report, believing it was better than nothing at all. We were not thoroughly satisfied.

Mr. PALMER. Neither was the other side, and that would be evidence, perhaps, that it was pretty near right.

Mr. SMITH, of Iowa. Well, it may be evidence that it was nearly

right; it sometimes is. All we want, however, and all we have ever contended for is that you are not the guardians and the people of the United States are not guardians of the habits of the people of Iowa—

Mr. PALMER. We are guardians of the Constitution.

Mr. SMITH, of Iowa. Oh, yes; guardians of the Constitution, but, as I understand, you are advocating it because it is necessary to make the law constitutional: but you want to insist upon our people having the high privilege of bringing in liquors for their own use, and we think we are able to take care of ourselves in that respect.

That is all I have to say, Mr. Chairman, and I thank you.

(Informal discussion followed about the method of procedure, and it was suggested that Mr. Crain be given twenty minutes.)

Mr. ROBERT CRAIN. Mr. Chairman, I would like to say to the committee that I have taken occasion to prepare a brief on these several bills. I believe it is conceded that there are some legal questions involved in these bills that neither Mr. Hough or myself, representing the legal side of this question, have had any opportunity of presenting before this committee at this present session, and I don't care to commence an argument on a question of this kind for fifteen minutes or twenty minutes or any other specified time in minutes. Therefore I would like to have an opportunity, if the committee will grant me that privilege, of presenting the legal reasons why in our judgment this bill should not be enacted.

Mr. PALMER. Is not this your brief?

Mr. CRAIN. Yes; and then I filed a supplementary brief on the C. O. D. bills. What we would like to do especially is to controvert the position that Judge Smith has taken on this subject and which seems to be the prevailing idea with many.

Mr. CLAYTON. Let Mr. Bennett be heard and then we can hear Mr. Crain.

STATEMENT OF HON. JOSEPH B. BENNETT, A MEMBER OF CONGRESS FROM THE STATE OF NEW YORK.

Mr. BENNETT. Mr. Chairman, I do not come from a prohibition State. The question is, to a very large degree at least, a financial one with us. We adopted the policy some years since of raising all our State revenues from indirect taxation, and we have a relatively high license with local-option features. The consequence was that last year the liquor traffic in our State contributed \$18,000,000 toward the support of the government of our State and the municipalities. One-half went to the State and one-half to the various localities.

There are about 250 no-license towns out of our nine-hundred-odd towns—practically a quarter of the rural population of the State. This bill, as I have read it, seeks to give the State control of these shipments as soon as they cross the State line, and that is important to a high-license State, because if we have not that control in the State, if we allow these places to be open just over the borders in the dry towns, we, as a State, lose just that much revenue. As one of the representatives of New York, I do not regard this at all as a temperance measure; in fact, I don't think it would decrease the sale of liquor in the State of New York to the extent of a glass; but as an

attack, indirect, of course, upon our revenues the continuance of the system, which has just started in our State, of these C. O. D. shipments into dry towns is something we very seriously object to.

STATEMENT OF MR. KARL R. ABRENDT, OF BALTIMORE.

Mr. ABRENDT. Mr. Chairman and gentlemen of the committee, I represent the German Turners' Organization, of Maryland, and also this morning I have been in receipt of a communication from the Independent Citizens' Union, representing 64 different organizations, who all wish to be placed on record as opposing this measure.

I will not tire you out with any long argument after so many excellent speeches, but simply wish to file our protest against this proposed legislation.

INDEPENDENT CITIZENS' UNION OF MARYLAND,

February 19, 1906.

To the honorable the members of the Judiciary Committee,

House of Representatives.

GENTLEMEN: Some two years ago the Independent Citizens' Union, for itself and many citizens of Maryland, protested against the passage of the Hepburn-Dolliver bill, not only by petition but also in person.

Together with others from various States of our Union representing civic and patriotic organizations of German-Americans our representatives appeared and stated the reason of our opposition to this bill. Later, at another meeting of your honorable committee, they again appeared, but received no opportunity to speak. They then sent in a memorial setting forth some of the motives actuating their opposition to the measure, and took occasion to answer some remarks made by the speaker at the previous meeting of the committee. (We herewith attach a copy thereof, it being as applicable to-day as then.)

Our members are busy people. We have no paid agents or salaried officials, who can devote their time to agitate against such measures as this bill before your honorable body, and we rely upon our Representatives in Congress to deal sanely with such when they come up.

Should they fail to do so, we have the remedy in our own hands for application when they again come up for reelection; for, based upon our election figures, we can safely assert that for every voter in the State of Maryland favoring sumptuary and prohibitive laws there are ten voters who believe in the rights of man and personal liberty. And we believe that there are enough such voters in every State to effectually influence the election results.

Respectfully submitted.

THE INDEPENDENT CITIZENS' UNION OF MARYLAND.

STATEMENT OF MR. KARL A. M. SCHLOTZ, OF BALTIMORE, MD.

As representing the Independent Citizens' Union of Maryland (State branch of the national German-American Alliance), Mr. Fred W. Wehrenberg and I appeared at the meeting of your body on Wednesday, the 2d instant, but did not have a chance to be heard that day. I take this opportunity of pleading against the Hepburn-Dolliver bill as it now appears before your committee. As it seems to us Iowa has added a now commandment to the other ten, practically to the following effect: "Thou shalt not drink liquors, either vinous or malt; naught but water shalt thou drink, this under penalty of mortal damnation and imprisonment." Under the Iowa statute, anyone living in small parts inland is absolutely prohibited from using any malt or vinous liquors for domestic purposes, and will be prevented by the passage of the act before you from even importing

the same. Under the exercise of this "police power" the good Lord would have been guilty equally with Noah in the matter that led to Ham's tribulations.

Or had St. Paul written to Timothy, and the latter then resident in Iowa, not only would the latter perhaps have been subject to seizure, but he, Paul, upon "arrival" in the State would have been subject to fine and imprisonment for "prescribing liquors without license."

As it is, even the legislature man's after-pocket flask is not exempt from seizure, and he liable to thirty days' retreat, there in lenten penitence to commune upon the iniquity of the world; or, should he appeal, the court will, in all probability, shrug its shoulders, and say: "That with the wisdom and propriety of the act it has nothing to do, for it must be presumed that the legislature knew what it was doing."

The inability of the State to strictly enforce this new commandment is avowedly confessed by its present appeal for aid to Congress. It asks of Congress a most extraordinary privilege. A privilege dangerous to grant. It virtually seeks permission for its police to enter any train at the border of the State and then inquisitorially and without further warrant to proceed in re and in rem to search for and confiscate the contraband liquor.

This very condition is predicted by the Supreme Court in *Rhodes v. Iowa* (170 U. S. Rep., 412, 422), citing *Leisy v. Harding*:

If the construction claimed be upheld, it would be in the power of each State to compel every interstate commerce train to stop before crossing its borders and discharge its freight, lest by crossing the line it might carry within the State merchandise within the character named and covered by the inhibition of a State statute.

To-day the inhibited merchandise is liquor; but who can anticipate what it may be in the near future? With an increase of persecution in Russia, might not it chance that those who believe the eating of pork to be sinful and harmful and so dangerous to health and morals be in the majority, and then, purely as a "police regulation," prohibit the raising, importation, or eating of swine's flesh within the State under penalty akin to that applicable to liquor? Wherein would be the difference?

If Congress can pass one law, virtually granting the right to search passengers and luggage, can it not also, in fact, ought it not, to be consistent, enact a law granting the State of Iowa and others the right to open any letter mailed in or to that State which, in the opinion of its police, contains an order for or notice of shipment of liquor? If the one law be proper, why not the other?

Legislators who neither accept themselves nor their trust seriously may enact "laws" which they never expect nor intend to be enforced; hence the general contempt and disregard in which such laws are held, and the little respect for legislatures and their members.

Congress can not afford to mire its reputation and weaken the general respect in which it is held by resorting to such "four-flushing" tactics.

Apropos of the arguments made before your committee on the 2d instant, I would request the privilege of saying a few words.

A Reverend Mr. Craft (such I believe to be the name) unhesitatingly asserted that he represented 28,000,000 of the people of the

United States. It is just upon such cheap assurances as this that the foes of personal liberty have traded all along. Not only did he collectively "corner" all protestant confessions, but ended by boldly pledging the Catholic Church (Roman) as in favor of the measure before the committee. Doctor Pangloss, Ph. D. (and also an A. S. S.), was certainly never more forward:

Another "trump" was a batch of hundreds (or possibly "thousands") of letters from German-Americans who "did not sympathize" with the efforts of the National German-American Alliance in fighting the battle of personal liberty. All these seemed to be from the cross corners and other unknown places. Particularly did he dwell upon a printer—name unpronounceable to the reverend speaker. We could add to the strength of this by admitting that, even right here in Maryland, there are hundreds of thousands of similar German-Americans who are indifferent to the actions of the National Alliance—but they repose in graveyards and other equally quiet places. Though, perhaps (as these can not by any stretch of the tongue be classed as "anarchists"), they may possibly help make up the "28,000,000" real supporters of the alleged interstate amendment—and prohibition generally.

It was also brought out during the day that in one of the pamphlets sent out from Washington (whether under Congressional frank or not, I am ignorant) it was stated, in effect, that the German-Americans were opposing the bill "because they did not understand its purpose, and that the National Alliance was in the pay of the brewers."

As to the first, these gentlemen, who have not even a speaking acquaintance with the German language, are hardly qualified to pass an opinion.

As to the second, I desire unqualifiedly to say that this assertion is a meretricious libel.

The German-American does not claim to have a patent on holiness and a monopoly of all the virtues, but does claim honesty as one of his qualities, and has a keen perception of his duties and rights in life and government, and protests against the besmirching of his character and those who represent him by "professional Christians" and prohibitionists, who trade upon the credit of their assurance, and agitate against the natural liberty of man simply to perpetuate their positions and the accompanying salaries.

If somewhat of the latter part of this plea does not go so much to the matter before your honorable committee as to the individuals that appeared before it, I offer in excuse that I am wrought thereunto by an honest indignation brought about by the assertions and dishonest methods resorted to by them to influence the passage of the bill before you.

Ever standing for true temperance and opposed to insincere and impossible prohibition, the German-Americans of this State join with the German-American citizens of the other States of the Union in protesting against the Hepburn-Dolliver bill.

STATEMENT OF PHILIP RAPPAPORT, ESQ., OF INDIANAPOLIS, IND.

Mr. RAPPAPORT. Mr. Chairman, I doubt very much whether I will have anything to say that will call forth any question on your part, but as a precautionary measure I will ask you to desist from asking any questions, because it will greatly embarrass me, I being quite deaf.

I represent the North American Gymnasium Union, a national organization entirely apart and distinct from the National German-American Alliance. We have about 300 local societies distributed all over the country, with a membership, in round figures, of about 80,000, among whom I am perfectly sure you will not find a single one who sympathizes with the measure that is before the committee to-day.

I have here in this little book the principles which this organization holds to and their laws, and I leave it on your table. I will only read the first paragraph, which says:

The North American Gymnasium Union is a league of gymnasium societies of the United States of America, organized for the purpose of bringing up men and women strong in body and mind and morals and of promoting the dissemination of liberal and progressive ideas.

We have not only about 80,000 members, but about 80,000 voters. Paragraph 67 of the laws of the organization says:

Candidates for admission to the society must be of irreproachable character, and must either be citizens of the United States or have taken the necessary steps for becoming citizens.

Now, gentlemen, while I am talking to you I might perhaps say something which might not be altogether in accord with the views of these gentlemen and which I probably might not say if I were representing the other organizations. But I want you to keep in mind I am representing quite a different organization. It is not my intention to make any sort of a legal argument, because I don't believe that I could enlighten you upon that side of the question at all. I suppose you all know about the legal side of it. The general object of the bill is to aid in the enforcement of prohibition, and as I and all those whom I represent are strongly opposed to prohibition, we are certainly opposed to the passage of this bill. I am against prohibition because it does not prohibit, and if it would prohibit I would be against it because it did prohibit. In other words, I am against prohibition on account of its vicious, pernicious, demoralizing effect, and I am against prohibition quite irrespective of its effect.

I am not going to speak to you about the effect of prohibition, because men of your experience and caliber know enough about that, and it is not necessary for me to tell you about it. Yet I call your attention to just a little matter, and that is this: I have here the last annual report of the Surgeon-General of the Army. This report is accessible to you and you will find on page 18 of this report a table which is a comparison of the admission and death rate of the United States Army for certain special diseases with those of foreign armies, and if you will study this table you will find that with prohibition in the American Army (and I apprehend there is not a particle of difference in which way prohibition appears, it is always the same

kind of prohibition), delirium tremens, alcoholism, prevails from 200 to 600 times as much as in the beer-drinking German Army. And so it is everywhere. It is the old, old story of Adam and Eve and that celebrated apple. Prohibition has been a failure and always will be, whether it has reference to an apple or a piece of ham or a glass of whisky.

I have here another document which I suppose you are all familiar with, and that is the Declaration of Independence. This holds that our Creator endowed us with certain inalienable rights and among these rights are mentioned the right of life and of liberty and of the pursuit of happiness. Now, what does that mean, the pursuit of happiness? It gives me the right to the pursuit of happiness, does it mean that I have a right to pursue your happiness or does it mean that you have the right to pursue my happiness? If it means anything I suppose it means that everybody has the right to pursue his own happiness. And if a glass of beer or even a glass of whisky is, in my opinion, necessary for my happiness, I want to have it, and I can not concede to anyone the right to forbid it to me or prevent me from taking it.

Now you may say, "Is that so; is a glass of whisky or beer really necessary to any man's happiness?" Perhaps not. But I tell you this, that the humiliating thought that it is possible for anyone to prevent me from getting it, if I want it, makes me unhappy, and I believe I have the right to the pursuit of happiness, if not under the Constitution of the United States, at least under the constitution of the State of Indiana, from where I come. I will not concede the right to anyone, either to the members of the Women's Christian Temperance Union, or to any clergyman, or to the State, to prescribe to me a certain mode of happiness. If I want to become happy, if I want to pursue my happiness, I want to do it after my own fashion.

I appreciate the good motives of the Women's Christian Temperance Union. I will even go further and concede that the clergymen are honest in their belief and think they are right; but I do say this: Whenever the clergymen commence to meddle with legislation and politics, beware! I am somewhat of a student of history, and you can not show me in all the history of mankind, from the remotest times of antiquity up to the present day, a single page where an action of the clergy is recorded that tended to bring about civil or political liberty or liberty of any kind; but you can turn to a thousand pages that record the fact that the clergy has always been in favor of oppression, suppression, repression, and every other kind of pression.

Now, then, I have no doubt that they have done what they believe to be right; that their acts were according to their beliefs. I have no doubt that the leaders in the Spanish inquisition thought they were doing right when they burned and racked their victims; but because they believed it right their victims received no benefit or alleviation of their sufferings. Now, gentlemen, we are serious in this matter. We do not want any kind of a prohibitory law, and we shall use our rights as citizens whenever we have an opportunity to prevent such laws. I have a little book here that is a reprint of an article from the North American Review, which was written by a surgeon of the Army, and here I find the following passage which may, perhaps, be interesting to you. It says:

A prominent army officer at Peking, under date of July 9, 1901, writes me:
"The Women's Christian Temperance Union would have no fault to find with the post here. The men go outside and get drunk on samsoy in town and go to sleep in back yards and other places which are worse, but the sanctity of the government reservation is maintained. The Germans have their beer garden, the Japanese have their place where they drink their tea, and the British have a place where they meet to take their drinks and they bring their beer to the table, and the French soldier has his little bottle of wine at dinner. We alone are virtuous; we are the advocates of health; we are the great hypocritical hippodrome; none like us."

The gentleman who spoke a short time ago asked you to keep your hands off. No law forbids the drinking. No law forbids the buying of intoxicating liquors. It is the State's business when it goes over its borders and prevents its sale, and you don't need to meddle with it at all.

Just one word more as to my personal experience. I am living in Indianapolis, which is the headquarters of the organization I represent, and I have the honor of being a member of the executive board. I came to Indianapolis in 1874 from Cincinnati, and when I arrived in Indianapolis, in the evening, the town was almost ablaze with bonfires, and the Democrats had an immense jubilation. Why? Simply because two years previous to that the Republicans had passed an obnoxious liquor law, which was called the Baxter law, and my German friends—I had no opportunity at that time to be one of them—united with the Democrats and all the Republicans, and the next legislature abolished the Baxter law. After that, in 1876, was the Presidential election. The issue was between Tilden and Hayes, and that was the memorable time when there was great exodus from the Republican party; such men as Carl Schurz—

Mr. CLAYTON. Carl Schurz was with the Republicans in that campaign. Don't you think you are straying a little away from the subject?

Mr. RAPPAPORT. I am through in a few moments. It seems to me that this might bear indirectly on it, because you ought to know how a certain class of citizens is affected or would be affected by a law of this kind, and I believe that a large number of citizens have a right of being considered in the legislation.

Mr. CLAYTON. No doubt of that; and we have sat here day after day and given them hearings hour after hour, until I for one, without speaking for this committee, have gotten to the point where I think this hearing ought to close.

Mr. RAPPAPORT. It is for you to do with this law as you please, and I think it is for me, for us, to give expression to our opinion.

Mr. CLAYTON. Exactly; and we have heard them.

Mr. RAPPAPORT. As citizens of this country we think the only way and the absolutely proper way is to regulate this by our ballots.

Then it was in 1881, I believe, the legislature of the State of Indiana passed a prohibition amendment for the first time, and then again we Germans organized, and I had the honor then to be the secretary of that organization, and the effect was exactly the same as it was before. It was the same way two years after. I guess it was in that election that President Harrison did not get even a majority in his own county. Now, we can not do anything else but use our political rights, and the manner in which we use them I

think is a matter you ought to know about, because after all, as far as the legal effect and practical effects are concerned, you know as much about it as any of us; but the reason we are for a political demonstration, either on this side of the House or the other side of the House.

STATEMENT OF MR. AUGUST H. BODE.

Mr. BODE. Mr. Chairman and gentlemen of the committee, before I start it is generally customary to make a few remarks about the personality of the speaker, and for that reason I will say that I come from the city of Cincinnati and represent the German-American Association, an association comprising about 80 different associations and about 20,000 men. I am also vice-president of the State association of which Doctor Hexamer is president.

From my personal knowledge I am sure that every one of those will disagree with the ideas expressed by this bill. Like my friend, the reverend gentleman this morning, there is no personal feeling in this matter. I am not a brewer or brewer's son and have not been a brewer's attorney, and so far as I am concerned I don't smoke or chew and only once in a while take a glass of beer, so I have no personal feeling. But I think it would be an unjust thing to other people to compel them to forego the pleasure of drinking a glass of beer, if it is a pleasure to them. I haven't the slightest idea but that it is going to be and intended to be a prohibitory law in those States where they have prohibition. This law as it stands there will certainly be a prohibitory law in those States; and I think the gentlemen are wrong when they say it is not calling upon Congress to come to their help.

I agree with Mr. Smith that his community and the States have a perfect right to enact such laws, and, I think, under the decision of the interstate-commerce cases, we can not prohibit the shipment into the State of original packages of liquor. If they find anything deleterious to health or morals they can prohibit, but that is as far as they ought to go. But what do they do here? They come and ask the power of the United States to help them along. They really confess that they have not been able in their own States to carry out their laws as they thought they could, and now they want the United States to say that it is not enough that under the police power of our States we prohibit the sale of liquor within the State as soon as anything comes into our State, but they want to stop it as soon as it gets to the boundary line. That is asking something like this: That if in this State there is a law prohibiting the bringing in of liquor of any kind then you stop on the other side one step.

What is a crime here is perhaps in favor on that side. Now, is that a proper thing for the Congress of the United States to do? The gentleman from New York says it is a matter of great financial importance in New York State—so many millions of dollars revenue for the State. In one State that is the question. In one State it can not be done, in the other State across the line it could be done, and the way I read this law now it would be a crime for a brewer or a distiller to ship across the line, because the place where it would be sent out would be the place where the crime would be committed. That would be a serious thing—that you could make a crime in Illi-

nois for the purpose of Iowa. That would hardly be a proper thing to do.

They have stated that they can not, under their State laws, carry out what they intended to do, and they want the help of the United States to do it. Now, it seems to me it would be very much nicer for them to say: "This is a matter we can not carry out in spite of all the laws that can be enacted." I have no doubt this law is constitutional. It might not be if that amendment were cut out, but this way it is a constitutional law, that the State does exactly as it pleases, but if they confess now we have been trying in Vermont and Maine and Iowa and other places to enact such a law, and we have miserably failed, so far failed that we have to call on Congress to help us along, that is something that I think ought to be beyond the power of Congress, or beyond the good will. We ought to consider the justice, the equity of the matter, and say we can not sit here and compel people in other States to live according to the notions of somebody else there.

If we would come to the idea that this thing could not be carried out, that you can not make any person virtuous and moral by law, and that it is entirely a matter of education and experience, I have no doubt that when the W. C. T. U., the good women here who lead the best of lives (and God bless them, males and females), if they would attend to their home life, it can not be done by law. On account of my home influence I don't drink to excess. Instead of spending their time about other things they ought to spend it at home and instill the instincts of virtue into those in the homes. That is the only place they can get it; they can never get it by law. And so I say while it is immaterial whether it passes this way or that way, it is quite certain in my opinion that it will never accomplish the purpose they seek to accomplish.

It is not the way to make the home pure and immaculate; the way to do that is to do that at home. In England, France, and Germany, and even in Russia, the boys can smoke or drink. In Russia the boys smoke cigarettes just as they want to. Here we say that the American boys and girls are weaklings, miserable things; that it is necessary not to let any temptation come before them. I don't think so. Throw them in the water before they learn to swim, but before you throw them in give them the lessons, instill those lessons into them, and if you do that there is no need of temperance legislation here any more than there is in England, France, or Germany.

I thank you.

MR. NICHOLSON. I would like to say that I think we have only one other speaker, Mr. Andrew Wilson, and that Mr. Sweet will make a brief statement after that.

THE CHAIRMAN. The committee insists that the arguments be confined to legal arguments from now on. Miss Cousins desires to speak, but in view of this insistence on the part of the committee I would suggest that Miss Cousins may file her remarks. However, the matter is entirely within the discretion of the committee. There are three or four gentlemen here from a distance, and two of them have gone out because they think they have been slighted.

MR. SMITH, of Kentucky. I suggest that Miss Cousins should be heard.

THE CHAIRMAN. It is entirely at the pleasure of the committee.

STATEMENT OF MISS PHOEBE W. COUSINS.

Miss COUSINS. Mr. Chairman and gentlemen of committee, in the first session of the last Congress it was my privilege to hear some of the arguments for the Hepburn-Dolliver bill and in turn to refute a part of them from my point of view in an extempore speech of ten minutes.

Since then I have been a sojourner in prohibition Kansas for over a year, and I am glad of the opportunity to give a few facts and recount my observation of its workings.

And first I submit the opinion of this bill by one of its authors, whose name is the hyphenated half of its title, Senator Dolliver.

In a speech at Kansas City, Mo., at the close of the last session of Congress on "Public Virtue" the honorable gentleman said:

In my judgment we are overestimating the value of legislation as a cure for the moral defects of a community. The family itself should shoulder the burden of moral affairs. They acquit themselves of responsibility by passing an act on the subject. For over twenty-five years I fully believed that the way to stop drunkenness was to amend the constitution of Iowa. I have concluded that what is needed is an amendment to the constitution of the citizen, and have abandoned the idea of making men sober by law.

If the gentleman decides after a twenty-five years' tussle with the question in his own State that he can't stop drunkenness in Iowa by an amendment to its constitution by what method and how does he propose to have this bantling which bears his name jack up the Constitution of the United States so as to stop tipping in all the States of the Union, and insert a Federal prohibitory direction that all the citizens thereof shall be made sober by inhibition, when he had thrown up the job in one State after a quarter of a century's trial?

Of the results in Iowa I will speak further on.

The Rev. Mr. Dinwiddie, secretary of the Anti-Saloon League, stated in the first hearing of this bill—which statement you will find on page 246 of the printed record—that three States—Maine, Kansas, and North Dakota—had absolute prohibition, and no sales of liquor were allowed save for pharmaceutical purposes.

Either the gentleman must have been misinformed as to these States or he misrepresented the facts as they are known to the most casual observer.

I shall review for your digestion the situation, as it came under my observation, as a refutation, later on, of the Reverend Dinwiddie's assertion, and merely wish to say as a passing note that the continual reiteration of the Biblical phrase, which is used so generally by divines and their allies, the members of the W. C. T. U.'s, to bolster up their demand for total abstinence—"Look not upon the wine when it is red," etc.—is not warranted in the Scriptures by this solitary test on prohibition.

From Genesis to Revelations the cultivation of the vine, the vintage of grapes, and the use of wine is found throughout its pages, both as a beverage and as a commodity of trade and commerce. We have no record previous to the flood of vineyards or wine vats or drink offerings, and yet Scripture tells us that, notwithstanding the absence of these so-called demoralizers of the race, the inhabitants of the earth became so vilely wicked that God repented of his Garden

of Eden experiment, and decided to sweep the whole into oblivion, save Noah and his three sons.

After the flood had subsided Noah is found in conference with the Lord, at the foot of Mount Ararat, and not only is deeded the whole earth for himself and sons, but the promise is given that the curse is removed—no longer should thorns and thistles grow, but the whole earth should blossom as the rose.

And the first thing which Noah did, in substantiation of this great honor, was to plant a vineyard, grow grapes, and formulate a wine, the brand of which is not given, but judging from the effect upon Noah, its stimulating attribute was quite as effective as the wood alcohol of to-day.

When Melchisedek, the king and high priest of Salem, goes out to meet Abraham on his return from rescuing his nephew Lot from kidnappers, he carries with him both wine and bread as a signet of rejoicing, and this communion service is found in every stage of the Jewish nation's existence, both religious and secular.

I find that Ham, the off-colored son of Noah, to whom was given the land of Canaan as his one-third patrimony, and was the only one of the three who stuck to his job and made a success of it, was also the raiser of grapes, as well as a brand of milk and honey, which made his country renowned as the land of promise, and one for which his less favored brethren who lost their patrimony became wanderers over the earth, landed in Egypt as slaves, were manumitted by Moses, yearned to possess after a forty-years' tramp through the wilderness, and who found, when they reached the border land of Ham's province, by the reports of the spies, who returned with a bunch of the sample grapes borne on the shoulders of two men, on a pole, that the inhabitants were giants of the Anak type, so terrifying in their aspect and so impossible of subjugation that the Israelites refused to go further, but turned back into the wilderness for another forty years of cultivation of the grape and like conditions of their off-colored brother's land, which should fit them to finally cope with the Hercules and Samsons in Canaan.

In the fifteenth, twenty-eighth, and twenty-ninth chapters of Numbers, and in Deuteronomy, in a lesser degree, I find the direction of Moses and the priests as to the burnt offerings, meat offerings, sin offerings, and "drink offerings to the Lord" which must be brought into the Temples at stated periods. Each bullock calls for a half hin of wine, a lamb one-third, a kid one-fourth "as a drink offering to the Lord," while the goat, which is indicated as the atoning sacrifice, takes the whole offerings of all the rest.

The wine which is indicated in any of these chapters would float a modern battle ship, and the question arises, "What was done with this drink offering?" Vats must have been there and storage plants which could hold this vast amount of liquids, while it must be inferred that both people and priests were generous users of the grape juice, and patrons of that art, the growth of grapes and distillers of wine, which is shown all through the old Scriptures as one of the most important branches of commerce and trade, as well as the element of the blood which gave energy to all the human faculties. Wine is constantly referred to in the old Talmudic versions as the "blood of the earth."

In the New Testament, Jesus, the great Teacher, turns water into wine at the marriage feast, and Paul, his exemplar, says "take a little wine for the stomach's sake," while Christ in his last communion service with his disciples follows strictly the old régime of Melchisedek and the Jews in breaking bread and drinking wine as a token of fellowship with all who love the good.

What then are the results of prohibition? In Senator Dolliver's State it has depopulated that fine area. By the last census of Iowa, since 1900, over 30,000 of her citizens have left the State. The schools report 45,000 less children in attendance, and a reporter of the Minneapolis Tribune writes of a recent trip through the State, after a thorough tour of the agricultural districts "that empty farm houses dot the land in all directions."

Ten bankers of Iowa committed suicide in 1904, whether from weak tea or cold water is not stated.

The fact is, gentlemen, that men of independence and strong character will not submit to the espionage, the spying, the contemptible methods, and impertinent attempts to control the personal liberty of others which prohibitory laws always engender. They prefer to move on, even to less favored conditions of climate and soil and surroundings.

It has been suggested that the rate rulings of the railways are largely responsible for this exodus. But the more alarming feature of this, from which none may escape, is that our franchises are rapidly passing into foreign syndicates control. The lords and dukes of Canada and Great Britain own three-fifths of our Northern Securities stock, while the Rock Island is entirely owned abroad, and other lines are passing into a like un-American ownership.

What of Maine and Kansas? In a recent speech at a banquet in New York the governor of Maine stated that prohibition was a profound failure and the people were the only ones of all the New England States who had held on to it, in the face of its disintegration of the morals and manners of the entire community, and in time it must be repealed.

Of Kansas and its "pharmaceutical" humbug, Thomas Benton Murdock, a well-known writer and editor says, in the Kansas City Star:

THE KANSAS WHISKY BOTTLE.

From the Missouri border to the western confines of Kansas, along every line of railway on both sides of the track, in the sunflower patches along the right of way, in the haymow of every livery stable in every town, in every alley and back stairway, in the top drawer of every bureau of every hotel, in the cellar-way of many homes, can be found the Topeka drug-store bottle.

I have seen the 4-ounce, the pint, or half-pint bottle. It is the same shape, the same greasy, unlovely appearing piece of glassware, which suggests the Topeka drug-store stuff—the cheapest in the land.

The Star, in commenting upon Mr. Murdock's arraignment, says:

In this accurate and graphic description Mr. Murdock, with his characteristic intuition, presents the real gist of the Kansas liquor question, where prohibition encourages not only evasion and deceit, but, what is even worse, a depraved taste.

Of my own personal observation I can enforce Mr. Murdock's review, with an emphatic indorsement of the demoralization rampant in Kansas.

In a little town of 800 inhabitants I have seen porters and maids carry out bottles by the hundreds from rooms and stairways where they have been thrown. Little boys follow men into the drug stores, with corkscrews, begging the gift of a drink for the privilege of uncorking the bottles, to which bottles these men have sworn falsely, as having all the diseases of the calendar.

The schools are invaded with this demon of falsity, and boys were expelled during my stay there for drunkenness and inebriety, a condition unknown in towns and cities, where the license system prevails and where children are protected by the law from illicit drinking. The solemnity of an oath is entirely ignored and the foundation stone of truth in character is rapidly disintegrating under such conditions.

Young men who are clerks and porters in the hotels, whose characters are still in the formative period, are sent by the patrons to buy these bottles so aptly described, and commit perjury with the utmost nonchalance as they gleefully swear that the person indicated by the bottle has Bright's disease, liver complaint, lung trouble, gallstones, appendicitis, or whatsoever physical disability may present itself to these young men's minds. These sales, I presume, the Rev. Doctor Dinwiddie would indicate as "for pharmaceutical purposes" alone.

It must thus be seen that prohibition breeds cant, hypocrisy, fraud, perjury, and like secret vices, while honeycombing the State with far greater evils to the rising generation than open saloons, properly watched and safeguarded, could possibly produce. Furthermore, this bill will not stay the sale of liquors in town, village, or hamlet. The bootlegger would spring up by the thousand, where now he counts but the hundred. I used to watch from my window, during harvest time in Kansas, this enterprising smuggler dispensing his wares to the tired laborer at close of day, behind an old barn which served as a partial screen for this bargain and sale counter. The number of bottles which came from his capacious boots, pockets, and hat to the numerous patrons who centered about this Falstaffian dispenser were marvelous to behold, and to gratify my curiosity I sent an inspector over to the barn, to whose shelter the harvesters retired to indulge in their libations to the gods, and found the surroundings to be even worse than the Augean stables so graphically described in ancient verse and fit subject for the Herculean cleansing.

In the winter season I faced another part of the village and there studied a different division of this "pharmaceutical" exploitation—the "speak easies" and "joint" sections.

In an old building which bore the title of "Restaurant and café," to whose uninviting outwardness there came an astonishing procession day by day of all kinds and kindred patrons, I learned through my inspector that this Mecca contained a motley assortment of old tables and chairs, uninviting crockery, forks and spoons of dilapidated brass, with cheese and crackers smelling of the ancient order of the hibernating mouse, all of which were thrown in for 10 cents—or less—which entitled the holder of this bill of exchange to a lottery-prize stick with a hook attachment, which dexterously lifted a plank in the floor and revealed an Aladdin lamp in transformed rows of this Topeka whisky bottle—reposing upon the bosom of Mother Earth, and only awaiting the magic touch of the male magician to become a thing of beauty and a joy forever—in his gastronomical

world. Or a check at the door would indicate a coupon slide in the wall which disclosed a similar feast of the "red eye" and entitled the fortunate possessor to fill his pistol pocket with a flask or two and retreat wheresoever he willed, as a Ganymede cupbearer to Reverend Dinwiddie's "pharmaceutical" humbug.

Thus the drug store, the boot legger, and the speak easy, of Kansas, enforce the prohibition law to the utter demoralization of all concerned.

And finally, gentlemen, I point you to the report of Mr. Yerkes, the Commissioner of Internal Revenue, last September, on this question of alcoholic devices—in patent medicines, whose sale is enormous in prohibition States—directing his deputies to impose the tax—the same as on liquors, as this report avers "they are composed chiefly of distilled spirits without the addition of drugs or medicines in sufficient quantities to materially change the character of the whisky"—and he refers to figures collected in Massachusetts recently, showing the immense sales, one such compound with a high percentage of whisky, having been bought to the extent of 300,000 bottles in one year in prohibition communities of one New England State.

In October Mr. Yerkes issued a similar ultimatum on "Essence drinks."

The officials of his department reported "that prohibition communities throughout the country consume an enormous amount of these alleged essences of lemon, vanilla, cinnamon, and ginger, sold by country merchants, drug stores, and others as flavoring extracts." And, according to their investigation, the sales "were sufficient in some communities in one day to have flavored all the pies made in the neighborhoods for five years."

Many of these compounds contained more than 50 per cent of pure alcohol, and all from 25 to 80 per cent of alcoholic strength, and these goods had no sale outside of prohibition districts.

The appeals which have been made to your committee hitherto on the "home" influence, in reference to this bill as a protection to the children and young men of this nation, comes with bad grace, it would appear, from a people which have instituted the "curfew bell" as a substitute for the parental authority and restriction—which ought to be of sufficient strength—to keep their children within the confines of home at night and to lessen the number of street arabs, whose alarming increase comes equally from the Christian firesides as out of the slums and purlieus of the poor and forsaken.

I am not one of those who believe that all of the goodness of the race centers in one of the sexes—the woman—or the condensed badness inheres in the other—the man.

The virtues do not descend in a straight line to Mother Eve, or the vices remain in unbroken length with Father Adam. Nature is an exact accountant, and a just one. She gives to the daughter the characteristics of the father, and to the son the attributes of the mother, while in the final adjustment she will be found to equally balance the measure. There are just as many good women as good men, and no more; equally as many bad women as bad men, and no less. The crossbreed of divinity and devilry are everywhere to be found in the sexes as Nature's true scale of balance.

If the man to-day is charged with neglect of his home, at the club of the rich, or the bar and saloon of the poor, so, too, there centers in

bridge whist, card parties of progressive euchre, the prayer meetings and charitable mite societies of religious organizations, the tap root of disorganization in woman's home rule and neglect of the beatitudes in parental restraint and maternal protection.

A most pitiable tragedy occurred in this Kansas town last winter, due solely to the contempt of the boys who refused to obey the curfew bell, resulting in the deaths of both postmaster and town marshal; and it was found that the boys who composed this miniature band of lawbreakers, who terrorized the community at night and were a menace to the peace and quiet of citizens, indoors or out, belonged to Christian families in toto, and came out of what we now call in a greater or less degree "the best society," formed on the sliding scale from Washington to the little hamlet in the jay-hawkers' domain.

Yet close on the heels of this tragedy there came a "reverend" pence collector for the antisaloon league, who stated that Kansas was expected to raise \$20,000 or more to suppress the lawlessness of the saloon and the iniquities of the drink habit all over the land.

In conclusion, gentlemen, permit me to call your attention to a little brochure on "The Vine and Civilization," published in 1883 by the late Henry Shaw, whose botanical gardens in St. Louis are of world-wide fame, and to that vast body of law-abiding, patriotic citizens, the German-Americans, numbering some 12,000,000 or more, which have been so ably represented in these hearings, who believe that beer is a wholesome and nourishing drink, recognized by them as a blessing and necessity—to many a liquid food—more conducive to sociability and good-fellowship than any other drink, wherein health, happiness, and strength, not drunkenness, centers. I beg your attention for the moment, to point the moral of the use of both these beverages upon civilization and advancement.

Of the wine Henry Shaw shows by carefully compiled statistics, and able literary review, that the wine-producing nations were always in the lead in science, art, literature, poetry, and the drama, while countries like that of Turkey, which forbids wine culture and strictly prohibits alcoholic beverages of any kind or character, stand at the lowest round of the ladder of civilization.

Ancient Babylon had her wine culture and distribution wholly under the care and guardianship of women 2,250 years before the time of Christ, and degeneration to that wonderful nation began when food and wine were permitted to be adulterated.

Canaan, the type of the promised land, owed her reputation and power to Ham's brand of the Eschol grape, equally with his cattle and bees, and Israel only became great when she followed this example and cultivated the "drink offering to the Lord," which transformed the Israelitish tramps into a composite nation, fitted to cope with the giants of Ham's land, and wine in both the Old and New Testament is the beverage par excellence of the Jew, while thus far no case is recorded of a drunken Israelite on the streets, or an intoxicated Jew behind the bars of the lockup or hold over.

On the 6th of October, 1904, at the World's Fair in St. Louis, a German day was celebrated to mark the contribution to America's greatness and development by that splendid body of citizens, the German-Americans, since the landing of the first colony (on the

Delaware, near the mouth of the Schuylkill, October 6, 1683), under the leadership of that remarkable German, Francis Danforth Pastorius, whose settlement of Dutch, Mennonites, and Germans gave impetus to the greater immigration from the Fatherland, which followed.

It was deservedly said by a leading St. Louis journal that—

The German ingredient of the American population, besides being the most numerous of all the foreign elements of the country's inhabitants, was also one of the most valuable, Germany taking the first place after Pastorius's settlement among all the countries of the world in furnishing immigrants to the United States. In peace and war the Germans, whether native or foreign born, have ever been the most intelligent, order loving, and patriotic of citizens, always in the first rank on the line of march of expansion, conquering and civilizing the wilderness from ocean to ocean.

In western Kansas—where I sojourned—the farms on the Saline River had been abandoned by Americans years ago, but all of them have been taken up by the thrifty Germans, who have brought cereal, fruit, and flower to perfection, and to-day they are the advance agents of financial security to both home and State.

This bill would deprive those valuable citizens of their personal right to good beer, to which they are all devoted, and create a spirit of antagonism and bitterness which bespeaks trouble for all concerned.

In 1858 Ralph Waldo Emerson, in presenting a letter of introduction to Thomas Carlyle, of the Longworths, of Cincinnati, said:

The chief merit of Mr. Nicholas Longworth, the founder of the family, is his introduction of a systematic culture of the wine grape and wine manufacture, which he attained by the importation and settlement of German planters,

so that great industry which brought millions and reputation to others was the product of German intelligence and thrift.

With their rich inheritance of blood and brain and brawn from that trio of ancestral races—the Vikings, the Teutons, and Germanic tribes—"who knew no fear and feared no death" while planting civilization in their march of twenty centuries, through European morass and impenetrable forest, they also were endowed with a like spirit of that incomparable ancestry, who, when the day's toil was done, gathered about the wassail bowl, the drinking horn, or loving cup to give the hand of fellowship and toast in loving kindness, health, and happiness to all.

To these virile races the world owes the preservation of that spirit of equity and exact justice as between man and man which forms a part of the jurisprudence of every civilized nation in Europe to-day.

To the matrons of these nations, who tramped beside their males in the two thousand years of advance and shared with them the perils both of land and sea, we are indebted for the essence of that spirit of equity and justice which resides in the unwritten law.

They were accustomed to sit in council with the warriors of old, and commit to memory for transmission to their children the law as it came word for word from the lips of the male.

No race suicide has ever been charged to their account, and the recent utterances of a female M. D., in a convention of the W. C. T. U.'s at Detroit, that the ballot for women would make them more prolific, while per contra it would stay the tributes of man on the altars of Eros and Bacchus, would fall on ears deaf to such unmeaning travesties.

In art, education, literature, poetry, drama, music, scientific investigation, and athletic sports the German race is to the fore. At the World's Fair of 1904, in St. Louis, out of the 2,000 medals and premiums offered, the Germans were accorded nearly 1,600, while to the genius of a young German-American was given the honor of the best formula for them all, gold, silver, bronze, and the Roosevelt.

The "beer garden" of the Fatherland is, to the modern German, what the forests of Woden stood for in fraternal union of ancient Viking and Teuton. All over Germany they are glad some spots of rest and beauty unnumbered, consecrated to the spirit of democratic equality, protected by governmental supervision in wholesome respect to the minutest right; an open-air paradise from June to October, where gather the rich burgher and humblest workman, surrounded by family and friends, seeking rest and recreation in the exhilaration of social life, which the glass of good wine and wholesome beer, supplemented by fine music, restful trees, flowers, and palms invite to uplift his tired soul.

Berlin, with innumerable "gartens," has just completed in one of her suburbs a magnificent beer palace, built upon terraces after a type of the old Assyrian style of Ninevah—a source of unending surprise and beauty in bewildering panorama of architectural structure, seating 20,000 patrons, and dedicated by the Emperor William in terms of lavish praise to the genius of the young German-American who planned and wrought its marvels.

Into his land of adoption—America—the German pilgrim came, installing his patron of inspiration—the beer garden—with all the devotion of the Fatherland's inheritance.

In Missouri it has ever borne the reputation of a decent, law-abiding, clean, and orderly center of good-fellowship and cheer, within whose borders no treason was ever plotted, and no traitorous utterances against free institutions ever whispered.

To these faithful patriots Missouri owes her retention in the Union in her hour of darkest peril, and to the German artisan, whose thrift, energy, and indefatigable labors are without compare, she is indebted to her advancing rank in the industrial world since the close of the civil war, while to the vast activities which have been projected by the German brain and formulated into wealth-producing industries by German enterprise and discernment Missouri forges to the front as the imperial State of the Middle West.

Turkey stands as the only prohibition nation on the earth. Not a drop of alcoholic liquors has ever coursed the veins of this race from the foundation of its state and church by Mohammed, centuries ago. But where can you find a people more cruel, bloodthirsty, barbarous, and licentious than this? Out of it comes no inspiration to higher culture and broader civilization and no impulse of the nobler beatitudes which moves humanity onward and upward to progressive heights.

In the frightful atrocities perpetrated in Bulgarian and Armenian districts in 1878, which aroused all England to emphatic protest and brought Mr. Gladstone into his celebrated Mid-Lothian campaign, he summed up the character of this nation in one embracing stigma, "the unspeakable Turk."

Which then shall be the exemplars worthy of our following!

The Reverend Dinwiddie asks you on page 9 of the former hearing "to strain a point" and give the State superior powers to the nation, and thus destroy vested rights and immense industries which are secured within the Constitution, and appoint three prohibition States the guardian and dictator of all the rest of the Republic.

STATEMENT OF ANDREW WILSON, OF WILSON & BARKSDALE.

Mr. WILSON. Mr. Chairman, it is not my purpose to indulge in any rhetorical efforts and my argument will be exceedingly brief.

It is unquestionably true that education has much to do in the development of our civic life. That is one phase of it. But there is the phase of cooperation which must not be overlooked as well. The two things go hand in hand.

A word or two has been suggested about the case of Vance against Vandercook. That is the whole gist of that case so far as it touches the constitutional question. On page 452 the court says:

It follows that under the Constitution of the United States every resident of South Carolina is free to receive for his own use liquor from other States, and that the inhibitions of a State statute do not operate to prevent liquors from other States being shipped into such State on the order of a resident for his use.

The Supreme Court of the United States is dealing with a State law; it so states it in so many words. There has not been in the history of the Supreme Court of the United States, in all of its decisions, a single case in which the Supreme Court has stated that an act of the Congress regulating interstate commerce is unconstitutional nor do I believe there ever will be, because the court had gone so far, or certainly did years ago, as to indicate very clearly that even the objects of commerce might be selected by the legislative power. I am not here to suggest what may be a proper policy for this committee or for the Congress of the United States. I am here to say, as Judge Bode said a few moments ago, that this bill here as it is offered here is constitutional.

But I do not see that that should be of such great importance at this time. Having, as we think, unbroken precedent from the beginning that no act of the Congress of the United States has been declared to be unconstitutional which attempted to regulate interstate commerce, that it would hardly be of importance to us to consider that phase of it, because of the fact that it will be time enough for us to think about it when the matter is presented, perhaps, to the Supreme Court of the United States. Now, whether a State law will be constitutional or not depends upon the action that Congress has taken or the inclination of the Congress, and so this case of *Vance v. Vandercook*, as all the cases, shows clearly that line of demarkation between the police power of the State upon the one hand and the exercise of the constitutional authority of the Congress of the United States upon the other in regulating the commerce among the several States.

It is time enough when a State law contravenes the Constitution for it to be determined that that law is not in accord with the Constitution. I want to say that all the cases, in this respect, are in perfect harmony with the case of *Vance v. Vandercook*, and when we take into consideration that the ordinary State law—and State

laws are the things that the Supreme Court of the United States has been dealing with—is in harmony with the Constitution there is no difficulty. In the case of *Crowley v. Wilkinson*, the Supreme Court held that it was not an inalienable right for a citizen to be able to sell liquor. That case came from Louisiana, and while we hear a we must regard what the law says is right and what the law says is proper for us to do.

I think that is all I have to say; simply that there is no conflict of authority whatever in these cases, and that the Supreme Court of the United States has held every act of the Congress regulating interstate commerce to be constitutional, and that there is no likelihood that it will ever hold otherwise.

STATEMENT OF REV. E. M. SWEET, JR., OF MUSKOGEE, IND. T.

Mr. SWEET. Mr. Chairman, I had thought of submitting some remarks, but I think enough has been said on this question to present our side of the case. It is essentially a legal proposition that is before you, and Mr. Dinwiddie was to present the principal legal argument for our side of the case. Mr. Dinwiddie has been in bed since the hearing two weeks ago. It was he to whom we looked primarily to prepare the legal arguments, and I desire to ask of the committee the privilege that he be allowed to file his brief as part of the hearing. That is all I have to say. We thank you for your attention, and we will not take any more of the time for our side.

Mr. HEXANER. I would crave the indulgence of the committee not to limit the following gentlemen entirely to the legal side, and I beg of the committee that they be heard. I certainly hope the committee will allow them to make statements.

STATEMENT OF DR. WILLIAM GARTNER.

Doctor GARTNER. Mr. Chairman and gentlemen of the committee, I represent about 225 German organizations with a membership of many thousands in western New York, headquarters in Buffalo, who ask me to represent them here in opposition to the so-called "Hepburn-Dolliver bill." To that invitation I have gladly responded in person, because I am deeply and conscientiously opposed to all legislation which tends toward oppression and which singling out one class of people for what is little short of persecution, and the sectional and class legislation.

This bill appears to be in the nature of an attempted sumptuary law in restriction not only of commerce but also of our personal liberty, which is dear to us all.

It is aimed particularly against the manufacturers of malt and spirituous liquors from other States who find markets away from home, and to put their products under a sort of police ban.

I come from a country which is notorious for its temperance and in which drunkenness is so unusual as to call in every instance for marked and unpleasant comment. I speak of Germany, of which the laws are less restricted upon the rights and privileges of the individual than those of my adopted country have come to be.

It seems to me that no one traffic, recognized by the Federal Government and by State governments as worthy of recognition and proper for taxation, should be made the subject of legislation peculiar to itself.

The spirit appears to have been anew awakened in this country which actuated the placing of scarlet letters upon the breasts of women who had been found out in lapses from virtue and the burning of individuals accused of witchcraft. In other words, I mean the spirit of injustice and fanatical persecution.

Anything good may by abuse be rendered its opposite and become pernicious. What is true of the consumption of malt and spirituous liquors is equally true of a hundred other products which, intended by nature to be helpful to humanity, have in cases become its scourge.

I am a citizen of the United States, and my home is in Buffalo, N. Y., and I pledge you, gentlemen of the committee, that the vast majority of the citizens and voters of that place are united and strenuously opposed against every measure of this character, of which there are similar acts of legislation now pending at the capital of our State in Albany waiting for action.

If we do not look sharp to it, our boasted liberties will have become a sham and a byword, and if you sow the Cadmus teeth of persecution you will inevitably reap the usual results. I protest before this committee against the adoption of such class legislation directed against one article of commerce and against the wishes of two-thirds of the voters of this country as being merely the opening wedge for the perpetration of a series of legislative wrongs crystallized into laws hereafter to be adopted by the Congress of these United States at the behest of a small minority of the narrow-minded and bigoted people of the United States that think that laws can make the people more virtuous.

Gentlemen, I thank you for your kind attention.

STATEMENT OF MR. JOSEPH KELLER, OF INDIANAPOLIS.

Mr. KELLER. Mr. Chairman and gentlemen of the committee, I am the president of the Alliance of the German Societies of Indiana, we being represented in nearly every city of our State from Vincennes up to South Bend; from Richmond to Terra Haute we have branches, and therefore we may justly say that our organization is a representative body. It represents the sentiment of the German population—a population, gentlemen, that buys homes, buys farms, raises families, pays the taxes, and obeys the laws.

It appears to us that this bill involves a principle, striking at the very root of the liberties presented us by the Constitution of the United States; it seems to us that this bill abridges the personal freedom of the individual. Gentlemen, we believe it to be our right and our privilege to select refreshments that we consider wholesome for ourselves and our families. A very large majority of the people of our commonwealth would consider the passage of this bill an attack upon their household. These people understand how not to abuse their liberties and they would consider it a gross injustice to be deprived of privileges because a small per cent of the population can

not control their habits. We, in Indiana, hate hypocrisy, and by far the most of our people would consider prohibition a tyranny.

In the year 1873 the general assembly adopted a liquor law, the principal feature of which was that the application for a permit to sell intoxicating liquors had to be signed by a majority of legal voters in the ward or township. This law went into history known as the Baxter law. It was so obnoxious to the majority of our people that after it had gone into effect leagues for freedom and right were organized all over the State. What followed? In the election of 1874 the party that was responsible for the Baxter law met with tremendous defeat, and in 1875 the Baxter law was repealed and a license law was passed. Again, in 1881, the passage of a prohibitory amendment brought the same result.

In the name of thousands of German-Americans of Indiana I protest herewith against an attack upon our freedom, and ask you gentlemen for a fair consideration of our plea. The German-Americans of Indiana are as one man, and an overwhelming majority of the people of the State are not for prohibition, and in the name of thousands of citizens of German parentage I am here to protest against an attack upon our personal freedom.

In conclusion, gentlemen, allow me to thank you for the opportunity afforded me to express our sentiments.

STATEMENT OF MR. MAX HENNING.

Mr. HENNING. Mr. Chairman and gentlemen of the committee, I represent the German-American Alliance of the State of Ohio, with a membership of 85,000 people—85,000 voters in the State of Ohio. I do not represent the Woman's Christian Temperance Union, but I do represent about 150,000 German women who are not members of the Woman's Christian Temperance Union, who are home-loving women who educate and bring up their children in the proper way. In behalf of these German-Americans and their wives and children I protest against the adoption or passage of any class legislation of this kind. I thank you.

STATEMENT OF MR. HENRY ARNOLD.

Mr. ARNOLD. Gentlemen of the committee. I am thankful to you for having the privilege of saying a few words. It will only be a few words, because I am no orator, and so you will not feel disappointed if I am closing as I have commenced.

As our president, Doctor Hexamer, has told you, I am the presiding officer of western Pennsylvania. I might take the liberty of telling you that we comprise 150 societies having, as has been told you this morning, a membership of 23,000 voting citizens. If a bill like this should be allowed it would seriously affect us in the West, and, as we feel, it would be a stone thrown against personal liberty. All our members are emphatically against such a law. They have been good citizens, as you all know and has often been proven to you. The German-American citizens are law-abiding and peaceful. They only ask to be allowed personal liberty in their private matters, in their families, and in their towns. I thank you for this privilege.

Mr. HEXAMER. I should like to call on Mr. Heine, from the so-called Pennsylvania Dutch section, who will express to you the sentiment of those people there.

STATEMENT OF MR. PAUL HEINE.

Mr. HEINE. Mr. Chairman and gentlemen, I am no speaker. Besides that, I have a terrible headache to-day, and I wanted to be excused; but still, as the opportunity offers, I wish to express the sentiment of the people in Lancaster County, which I have the pleasure to represent. I wish to say that every one of our so-called Pennsylvania Dutch are against this measure. They consider it unfair, injurious to a great many interests, and that it has in it hypocritical tendencies to the highest degree, and for that reason alone, if for no others, we think that the proposed bill should be turned down. I say so in the name of all the members of our German-American Alliance and the German societies of our section, and I believe that every fair-minded, liberty-loving man and woman is in harmony with this expression.

I thank you very much for the opportunity you have afforded me, and ask another apology for my remarks.

STATEMENT OF MR. G. A. LAMADE, OF ALTOONA, PA.

Mr. LAMADE. Mr. Chairman and gentlemen of the committee, on behalf of the Altoona, Pa., branch of the German-American Alliance, comprising thousands of Pennsylvanians, industrious men, and voting citizens, and comprising thousands of conscientious church members, I desire to indorse the legal arguments as presented by the gentlemen from Chicago, Cincinnati, and Philadelphia, in opposition to this proposed legislation; and I also wish to indorse the moral views expressed by Mr. Rappaport and Miss Phoebe Cousins. In indorsing those views I know I express the sentiments of all my constituents.

Gentlemen, I thank you.

STATEMENT OF MR. P. A. WILDERMUTH, ESQ., OF PHILADELPHIA.

Mr. WILDERMUTH. Mr. Chairman and gentlemen of the committee, there are four words contained in this bill. I understand that the committee would prefer hearing the legal phases involved in this measure. Those words are use, consumption, and storage. We have no objection to the word "sale." We all understand that every State by its very organic act has the right to suppress the sale of liquor, but it has not got the right to suppress the use, consumption, and storage of liquor, nor has it a right to interfere with the shipment of that liquor before it reaches the hands of the consignee. With those words eliminated the bill would not be as obnoxious as we view it at present.

Sensible, reasonable beings do not have to be lawyers, nor do they have to be educated, can see in those four words the very object of

that bill which has been so frankly admitted by Mr. Richardson, and that was to prohibit the personal use of liquor in a State that might take advantage of this act and pass further repressive laws denying the personal liberty to the inhabitants—the unfortunate inhabitants—of those States.

There has been a question as to prohibition raised by many of the speakers. That question of prohibition is just as proper for the consideration of this committee as the legal phases involved, because there are prohibitive laws, consummatory laws, inquisitive laws, all kinds of laws, but you can not prohibit by law.

That had been tried, particularly in England, Scotland, and Ireland, some one hundred and twenty years ago, when they passed the most stringent and repressive methods. They increased the taxation to such a height that it practically forbid the use of liquor except by the men of wealth. That was the House of Lords' view of the liquor question and the measures necessary to repress the drinking, particularly of gin, at that time throughout England. The result was that respectable men—men of character—refused to continue in the business of selling liquor where it was the object of such restrictions. The result was that the liquor traffic then fell into the hands of smugglers and scalawags and blacklegs, and there was more gin drunk in England under this condition of affairs than there had ever been before. This continued for some time—for some twenty-five years. There were riots, there was bloodshed, and finally there was an attempted assault upon one of the members of the House of Lords, and that resulted in the repeal of those obnoxious and restrictive measures.

Whether we want to or not, we must benefit from seeing and studying as to what transpired not only to-day, but yesterday, and a thousand years back. There were things accomplished in those days that we to-day, with all our ingenuity, must confess we can not accomplish. Take the pyramids of Egypt; take the parables of the Bible; can they be done to-day? The consensus of opinion of thinking men, viewing history as we find it and recording events then as they transpired, is that prohibition and the restriction upon liquor can not be enforced.

The cases on the strictly legal phase of the bill that would apply directly upon it would be the case of *Lisy* against *Hardin* and of *Vance v. Vandercook Company*. Those cases have been quoted on each side. Those cases, as I view them, can only be properly quoted on the side against the measure. Logically following the admissions and confessions of the other side, their object is to prevent the personal use of liquor, and I am glad of one thing—that they have the manhood to stand before you and say that that is their object. We know what we have to contend with. In the first place, when they passed the *Wilson* bill they were confident that it would accomplish that result, which they find now, in the face of the decision of the United States Supreme Court, to be indefeasible. They want to override, they ask this committee to overrule, the decision of the Supreme Court in the original-package case, where the Supreme Court had to say to the State of Iowa, "Hands off; you dare not touch that liquor; hands off, that is a shipment over which Congress has absolute and the only authority."

The next step taken by the prohibition element was that in reference to the canteen. Since our enlisted men in the United States Army and Navy have had their canteen ruthlessly and illogically snatched from their hands there has resulted nothing but demoralization and desertions among the ranks of those men that enlisted under the Stars and Stripes, and are ready to go out and sacrifice their lives for their country. But I want to say to you gentlemen that I doubt if one of those men that were here to ask for the passage of that anticanteen law would take a musket and fight for the United States; I doubt it very much. They were very successful in having a law of that kind passed. They next attacked the House restaurant. Liquors were sold in the House restaurant. The House foolishly, I may say, listened to and acceded to their request and abolished the sale of liquors and wines in the House restaurant. The bill was passed over to the Senate and the Senate concurred.

Now, in the face of the decision of the United States Supreme Court, they want to enforce their ideas upon the citizens of prohibition States who still insist upon using liquor. They find that that decision of the Supreme Court took that weapon from them. They could not take that liquor away from the man if it came there in an original package, and so they bring this bill before you and they ask you to make this bill a law—for what reason I have not been convinced. I have heard all their arguments, legal and otherwise. The burden of proof is upon them to show that there is a necessity for any such inquisitorial act as this Hepburn-Dolliver bill. Under those conditions they have not brought enough here before this committee to entitle them to such a consideration of the bill as would be given to a bill that did not attack the personal rights and liberties of citizens who are unfortunate enough to reside in prohibition States.

As to shipments, I believe one of the orators on the other side, as an illustration, cited cases where liquor was shipped over to the American Express Company or the Wells-Fargo Express Company, any express company, into a prohibition State, and it was sent to A, B, C, D, or 1 or 2 or 3 or 4. That does not make an illegal contract; it does not necessarily follow that that is an illegal shipment. People go to drug stores in these prohibition States and buy Hostetters' stomach bitters, containing 56 per cent of alcohol, or Peruna, containing about 48 per cent of alcohol. Instead of that, I think they ought to have honesty enough to buy liquor, and if they do buy liquor they ought to have it shipped to them in their right names, but many of them prefer not to do so. If a man's name is Andrews he may have it shipped to A or if his name is Bradley he may have it shipped to B; he doesn't want people to know he used whisky.

If this bill should become a law that State law would be unconstitutional and they could not touch either a package of liquor in possession of an express company or steamboat company or in transitu in any way. That, I think, has been well settled. The safe, sane, and sound guide in viewing bills of this kind, as to the constitutionality, is to stay by the old landmarks—don't get too far away from the seven original articles of the Constitution. The Articles of Federation were found to be merely a rope of sand. This very thing, then, interstate commerce, and the impotency of the States to regu-

late commerce among themselves, under what was then known as the first Constitution of the United States or better known as the Articles of Federation played an important part in bringing about the present Constitution.

The State of Virginia in 1786 held a meeting, appointed commissioners to meet the commissioners of the other States for the purpose of arriving at some agreement whereby the trade relations, shipments, and imports between foreign countries and the States would be regulated. There followed shortly after the meeting of those commissioners the seven articles of our present Constitution of the United States. Now, these people ask you to delegate, to give, to return, so to speak, to those States something which the State of Virginia over 120 years ago asked should exist only in the United States; they ask you after 120 years to give back that power—to how many States? About three. At that time the understanding was when the Federal power was given the right and exclusive right of regulating interstate commerce or commerce then between the States that it would be ratified by three-fourths of the States.

If you were to apply those same conditions to this bill in which you are asked to give the rights of 45 State and 5 Territories, I don't think there would be any question as to what would become of the bill. One of the gentlemen on the other side said here two years ago that he would like to see the merits or demerits of this bill placed before the voters of the United States. That is just what we want. I am personally heartily in accord with a proposition of that kind, because after such a vote I think that they would be satisfied for some time to come that the people of the United States want no such legislation as that, nor would this committee's time be taken up with any such proposition or with the consideration of any such bill as the one now before the committee.

As to the question of contract, it is a serious matter to interfere in the contractual relations between citizens of different States. As an illustration, a liquor dealer receives a letter from another State. That State is a prohibition State. The writer of the letter asks that a cask of wine or of whisky or of some liquor be shipped to him. Now, the people in favor of or backing this bill are the people who want you to say by this bill that the place where the goods come from is the place of contract. In other words, you might just as well ask Congress to remove by law the soil of Illinois and put it in the State of Iowa.

Congress has no right to say where a place of contract begins or where it ends—that is, speaking in relation to such part of a contract as may be involved in this bill should it become a law—for when that liquor dealer receives that order for the goods, that liquor being in Illinois and the order coming from a prohibition State (as an illustration, say Iowa), it is an offer and an acceptance. The moment that offer is accepted it becomes a contract. That contract, however, does not become complete until the goods are delivered in the hands of the consignee, and it makes no difference where he is. It makes no difference what the State laws are to the contrary, and it makes no difference what laws Congress may pass to the contrary. The place of contract being in Illinois, he ships the goods, whether those goods are shipped C. O. D., on credit, or by any method of payment.

Then, as an illustration to show where a citizen is deprived not only of his personal liberty but of his property, the laws of the State prohibit the bringing of a suit to recover for liquor sold. If that is so, the sale being illegal in the State, of course the contract was not made in that State; yet at the same time this man that sent the liquor into the State, if he wants to bring suit to recover for the value of those goods, must go over into that prohibition State and sue the consignee there, and that right would be denied to him by the State law, and should he knock on the doors of the Federal courts they would say "No; we close our doors to you, because your demand is not as much as \$2,000." He could not appeal for his rights to a Federal court unless his claim was \$2,000 or more. Under those circumstances why should this bill be considered further? Why should it become a law? Reason and logic are against it, and no doubt the lawyer would say that it is unwise and unwarranted.

Congress in imparting to the States, or as some term it, delegating to the States, its right over interstate commerce parts with something too valuable to be made the plaything of a prohibition State or any other State, and that which they may not again receive back. Congress should very jealously guard all its powers, particularly over laws of this kind. The question having been admitted as to the purpose of the bill—for they make no bones of it, they say we want to stop a man from personally using liquor—under those circumstances, under those conditions, and all the phases, the law would be unconstitutional. I have here more in detail the questions which I have touched.

As I have said, interstate commerce was an important element in creating the present Constitution of the United States. The commissioners from the different States met, the first action being taken by Virginia in 1786, and these commissioners considered how far a uniform system in their commercial regulations could be adopted, as applying to all the States, for their common interest, and for their permanent harmony, and from that step there ultimately resulted the seven original articles of the Constitution. State rights and hostility to Federal power in times past have been the cause of bitter controversies and strife, where many States insisted upon their own government, independent of all Federal power, and how the shades of those departed exponents of State rights must view with indignation the spectacle of a few weakling States who ask for Federal power to do their work for them.

States which admit that they are unable to enforce their own laws and ask your assistance to help enforce unjust and obnoxious laws and restrictions against their own citizens are utterly unfit for self-government and should surrender their organic rights and become Territories where they would be under the direct and exclusive control of the Federal Government.

Thomas Jefferson, in the *Jeffersonian Cyclopaedia*, section 8131, etc., says:

I believe the States can best govern our home concerns. Interior government is what each State should keep to itself. I have always thought that where the line of demarcation between the powers of the General and the State governments was doubtfully or indistinctly drawn, it would be prudent in both parties never to approach it but under the most urgent necessity.

Viewing the bill from all points it is vague and inconsistent, for it does not clearly define the line of demarcation of the ending or the beginning of either Federal or State control over an article of commerce.

The words in the bill, to wit, "use, consumption, or storage," attempt to confer a power which neither Congress nor State has authority to do. These words plainly indicate the covert purpose of the bill. Those favoring the bill assert that its purpose is not to deprive a citizen of his right to use and store liquor for his personal use; that the bill is merely to assist in enforcing a law of a State which makes the sale of liquor unlawful. If this is true, why insert the words "use, consumption, or storage," of which an unfair and arbitrary advantage may be taken of citizens' rights under color of law? If the advocates of this bill are sincere, the bill should read "transported into any State or Territory to be sold therein, or remaining therein for sale on storage or otherwise," and no legislative power can go further nor confer greater police powers upon any State without contravening the constitutional right and personal liberty of individuals.

The words "before delivery" are in effect an interference with the right of contract, for under this provision there is nothing to prevent a prohibition State from seizing and confiscating liquor in transitu before it reaches the consignee, under section 1 of the bill which provides that liquor "shall, upon arrival within its boundary, before and after delivery, be subject to the operation and effect of the laws of such State as though such liquors had been produced in such State." How ridiculous the last sentence, when we know that in several States the production of liquor is prohibited by law. Under such facts what interpretation and disposition is to be made of liquors brought into that State for use, consumption, or storage?

A law can only prohibit the sale of liquor, but never its use; nor by any jugglery of words can this aim be accomplished, nor should even one citizen of the United States of America be exposed to the interpretation of an alleged law by zealots, and his persecution made possible by intolerance. It strikes me forcibly that this bill is an attempt of the tail to wag the canine, for its provisions are for few States. And as to the right to regulate the sale of liquor (over which a State has absolute power), and the right to use, consume, or store liquor (which is assured and can not legally be denied), there is this difference: If the liquor is brought into the State for sale or intended sale, then it is subject to confiscation without this legislation; if for personal use, consumption, or storage, this legislation is vicious and unconstitutional. Contractual obligations may be materially impaired in this, that where a State law prohibits the sale of liquor and a citizen receives a consignment of liquor from another State, on credit, for his own use, the consignor would be denied his right to recover, within the State, in a suit for its value, if the bill makes liquor subject to the State laws as to use, consumption, and storage.

Why should citizens of different States be deprived of full and complete contractual relations? There can be no dispute but that where a citizen of a State mails an order to a dealer in liquor in another State to ship him a package of liquor, on credit, or C. O. D., or any other terms of payment, if the order is accepted and the goods shipped, the place of contract is within the State where the

acceptance takes place, yet the shipper would be deprived of his right to bring suit in the other State to recover therefor by the statute of a prohibition State. If the amount is less than \$2,000 the Federal courts are closed to him and he is deprived of his legal rights. Goods sent from one State to another for sale become a part of the general property of the State; this is not so when applied to goods so sent for use, consumption, or storage, and this bill can not lawfully change it.

In other words, where goods are brought into a State where there is a restriction, a tax, or some other regulation, the tax or the regulation does not become operative.

Mr. FOSTER. Until it is in such a shape as to be practically upon the market for the sale have you any decision as to the legislative power to affect the question of the place of contract?

Mr. WILDERMUTH. I have State decisions, but no Federal decisions on that.

Mr. FOSTER. No decisions of the Supreme Court of the United States?

Mr. WILDERMUTH. No; but it has been followed out universally. There is *Cooley on Contracts*, who says that the place of acceptance is the place of contract. Our Pennsylvania supreme court has also decided that where a citizen of New York—this was the case between a New York citizen and a Pennsylvania citizen—

Mr. FOSTER. It is a question of legislative power to designate one place as the place of the contract?

Mr. WILDERMUTH. Oh, yes; within the State; but as to the question of whether Congress has power to designate where the place of contract is in the contractual relations between the citizens of two States—is that what you refer to?

Mr. FOSTER. Yes.

Mr. WILDERMUTH. I do not think Congress has any power to arbitrarily state the place of contract in a matter of that kind.

Mr. FOSTER. You have no decisions limiting that?

Mr. WILDERMUTH. No, sir; I have no decisions on that. I don't think that question has been decided by our Supreme Court unless it was decided in the case of—I have here *Brown against Maryland*. On that decision was founded the decision of the Supreme Court in the case of *Leisy against Hardin*.

The principles held in the original package case of *Leisy v. Hardin* were evolved from the rule laid down by Chief Justice Marshall in *Brown v. Maryland* (25 U. S., 443).

That the point of time, when the prohibition ceases and the power of the State * * * commences, is not the instant when the articles enter the country, but when the importer has so acted upon it that it has become incorporated and mixed up with the mass of property in the country, which happens when the original package is no longer such in his hands; that the distinction is obvious between * * * which intercepts the import as an import on its way to become incorporated with the general mass of property, and * * * which finds the articles already incorporated with that mass by the act of the importer.

Therefore, it follows from this decision that notwithstanding Federal or State laws to the contrary no State has power to seize or intercept liquor transported into that State until after it has reached the hands of the consignee, and only then or thereafter if the con-

signee makes or attempts to make an unlawful use of the liquor, which unlawful use can be nothing less than a sale or an attempted sale of the article. He has a right to it for his own use, and he has the same right to make a gift of it to another as he would of a box of cigars or any other article. The prohibitionists reached the climax of their restrictive legislation when the Wilson bill was enacted, and can go no further in the shape of this or any other legislation having similar objects in view without contravening rights assured by the Constitution. The bill is a corollary and not necessary, particularly where constitutional questions arise involving Federal power over interstate commerce, State rights, personal liberty of citizens, common carriers, and the contractual relations between citizens of different States.

As to the question of a contract, as the law stands to-day, and as I am satisfied the law will be, even should this bill become a law, the place of contract under those facts as I have stated them would be in the place of acceptance, because there is no contract until the minds meet. I make an offer, but when that offer is accepted in writing there is some step taken toward the confirmation of that contract, and it is not in the power of the State or Congress to say where that contract shall take place. The rule of *lex loci* has always been—I know of no case to the contrary—at the place where the offer was accepted. There is a promise for a promise, an offer and an acceptance, to complete two divisions of the contract.

The question involved in this particular bill before you in its contractual relations is but the one, and that is the offer and the acceptance. I mail an order from a prohibition State to Illinois, a non-prohibition State, to a dealer asking him to send me a cask of wine. I say I will remit in thirty days, or send it C. O. D., or I may forward the money right there, so much. When he gets my letter, he may throw it in the waste basket. There would not be any contract or there would not be any place of contract. He may alter the conditions; he may answer my letter by mail. Still no contract. But the moment he accepts and fills that order and ships the goods, then it is a contract, and it is not in the power of Congress or a State thereafter to interfere in the relations between myself, as consignee, and the dealers, as the consignors, of that article of liquor, and when that article reaches me and I, after getting it into my possession, attempt to make an illegal use of it by selling it or offering it for sale within the State where I live, then the State law is effective, and this bill can not make the State law any more effective than it is on that point.

I don't know why the burden of proof should be thrown on a man that uses liquor, because the well-known principle of law has always been, and I hope it will never be changed, that every man is innocent until he is proven guilty. I know of no man that has ever been put on the rack simply because people thought he was guilty, and then he would have to start in and prove he was innocent, without an accuser. Who is the accuser in this great offense of using liquor. A lot of paid people. There are no representatives of those States who are the accusers, unless it is the father of the bill. But as to the full import and purpose of the bill, it is too far-reaching to be trifled with. And, gentlemen, in even considering a bill of this kind, when we look at those who ask you to make it law, it

strikes me as attaching too much importance to nothing, absolutely nothing, and a subject unworthy of your consideration.

I can safely say that forty years ago if anybody had brought a bill like this Hepburn-Dolliver bill before this same committee I believe that the originator, together with the bill, would have been thrown in the waste basket. They would have considered it an insult to their intelligence to have a bill as ambiguous as this brought before them. And then when you ask them what the bill means, they say, "Why, to stop people from drinking liquor in the prohibition States; they still persist in drinking it, but we hate the sight of anybody drinking liquor, and we want you to help us to prevent them from drinking it." If they had the power they would strike it right from the hands of those people, in their intolerance.

There are more people ruined by other things than liquor. Every time we read of a crime in the paper there is generally a woman in the case. We read about men going wrong and graft. It is not because of drink. Yet, according to the prohibitionists, it is all because of whisky. It is sometimes said that money is the root of all evil. It is just as logical to say that money is the cause of all evil as it is to say that the drinking of liquor or wines or beer is the cause of all evil. That is the logic of their side.

STATEMENT OF MR. GUSTAVUS A. KORB.

MR. KORB. Mr. Chairman and gentlemen, I represent the Independent Citizens' Union of Maryland. We are not a campaign body, but we are a regularly incorporated body under the laws of the State of Maryland. Connected with this organization are 68 societies from Baltimore City and the neighboring counties. We have a membership of between 25,000 and 30,000, and all of them are legal voters of the State of Maryland. I do not believe there is one in that entire number who is in favor of this bill. I was requested to come here and speak before this committee, that this committee might not report this bill favorably.

The argument that was advanced by one of the speakers very seriously impressed me. Mr. Smith said that he wanted to be left alone to enforce the laws of Iowa. Gentlemen, that is what we want. We want to be left alone to enforce our own laws. If Iowa is not able to enforce its own laws it ought to repeal them. I was out there about sixteen years ago, and at that time there was a prohibition law on the statute books of the State, supposed to be enforced in the entire State.

From the arguments I heard here to-day I find that the State is gradually swinging the other way; that they are permitting liquor to be sold at some places in the State. Their own citizens, it seems, are going against the law; and, gentlemen, if this bill that has been proposed becomes a law, what will be the result of it? You are going to make the citizens of this country uphold that law that it seems the citizens of Iowa themselves do not want. They are going to have their beer and liquor, and you may pass laws as much as you please and you won't prevent them from getting it. You are simply wasting your time by enacting such laws as this.

We have in our own State of Maryland a law that is supposed to be very stringent as to selling liquor on Sunday, and yet I know that there is plenty of beer and whisky sold on Sunday in Baltimore; I know that a number of saloons do more business on Sunday than on any other day in the week. Although policemen go around in citizens' clothes and try to prevent that sort of thing, and make raids on saloons that sell liquor on Sunday, still it does not stop it. You can not stop it that way. And so, if you pass this law you will create that much more disrespect for law, because the people will violate it. They think you are robbing them of their personal rights; but they will violate the law, and they will get what they want to drink in spite of all the laws you may make. You will simply make them go about it in a little more secret way. You will create a disrespect for law by imposing upon people laws that they will not obey, and laws which will be violated.

I thank you, gentlemen, for your attention.

The CHAIRMAN. We have been sitting here all day listening to these speeches, and if there are any others who wish to speak they can have their remarks printed in the record.

Mr. BARTHOLOTT. I want to call your attention to the fact, Mr. Chairman, that there are fifteen members of Congress that have asked to be heard on this bill.

The CHAIRMAN. Yes; I know there are.

Mr. HEXAMER. And there are a few more speakers here who wish to be heard. It is impossible to prepare legal arguments at a moment's notice, you understand, Mr. Chairman. We have piles of letters from people that want to be heard here. As Judge Bode and Mr. Wildermuth have shown us, there are new standpoints from which to argue this question. I would therefore request that you give us a chance.

The CHAIRMAN. I could not anticipate what the pleasure of the committee will be on that question. We can not act on that now.

Mr. HEXAMER. We only pray that this be put on record as the National German American Alliance.

The CHAIRMAN. Yes. I have received this afternoon the names of a good many Members of Congress and several United States Senators who insist upon being heard. I have not sent for them, because I knew you gentlemen were here, and I thought as many of you have come from a distance it would only be fair to hear you to-day.

Mr. NICHOLSON. May I be allowed to make a statement in connection with this request?

The CHAIRMAN. Certainly.

Mr. NICHOLSON. I would say that if the hearings were to be continued, if we felt that there was any necessity for the enlightenment of the committee on points not fully covered or upon points that they might want information upon, we could bring a host of people here who would be only too glad to come—attorneys and others—and I am sure they would speak to the merits of the bill. It had been our understanding, however, that there was an agreement on the part of the committee, perhaps, to take final action to-morrow, and with that idea we only put forward a few of our speakers to-day, trying to round up our argument from our standpoint. I would like to go on record as not being in favor of any further arguments or statements.

STATEMENT OF MR. JOSEPH E. ADAMS, OF WILMINGTON, DEL.

Mr. ADAMS. Mr. Chairman, I represent the Wilmington branch of the German-American Alliance, and on behalf of said branch I want to enter a protest against the passage of this proposed measure. In Wilmington we have a population of about 18,000 Germans, that many in Wilmington alone, and there are quite a number in the State. In their behalf I protest against this bill, and I am sure that I am authorized to say for them that if it were put to a test not only the German-Americans, but the population of Wilmington and Delaware generally would be against it—there would be an overwhelming majority against the bill.

STATEMENT OF MR. ADOLPH TIMM.

Mr. TIMM. Mr. Chairman and gentlemen, we have quite a number of letters from our western branches who would like to be here to protest against this Hepburn-Dolliver bill. I am secretary of the National German-American Alliance, and I want to enter my protest in that capacity against the bill.

(Adjourned.)

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Friday, March 16, 1906.

The committee met at 10.30 o'clock a. m., Hon. John J. Jenkins in the chair.

The CHAIRMAN. We continue this morning the hearings on the Hepburn-Dolliver bill and the other bills relating to that subject.

**STATEMENT OF HON. RICHARD BARTHOLODT, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MISSOURI.**

The CHAIRMAN. Mr. Bartholdt, which bill are you going to speak with reference to? There are three bills.

Mr. BARTHOLODT. I am going to speak to the Hepburn-Dolliver bill, Mr. Chairman.

Permit me to say at the outset that what I am going to submit is merely a skeleton of the argument that might be made on the pending bill.

During the hearings in this and the last Congress—and I have attended all of them—it became evident to me that the members of this committee are not particularly anxious to hear arguments other than on the legal aspects of the case or on questions touching the constitutionality of the bill. This is quite natural, perhaps, in view of the fact that the committee consists exclusively of jurists. And yet to my mind the material questions involved here far outweigh the mere technical ones. It is important, of course, whether the bill under consideration can properly be fitted into the framework of our national laws and whether it is constitutional in the light of the decisions of the Supreme Court on this subject, for, I am sure, if the majority of this committee believed the measure to be unconstitu-

tional that would settle it, and there would be no need of any further argument.

I will go even further and say if only a reasonable doubt existed on the constitutional question the judiciary committee could not be induced to act favorably on a measure surrounded by such doubt. Any other committee of the House, from entirely innocent motives, might be prompted to report a bill of doubtful constitutionality, but the great Committee on the Judiciary, I am sure, would never stoop to such actions, because its members are too jealous of their reputation as constitutional lawyers, a reputation to which they usually owe their appointment to this committee. Moreover, we are all under oath to uphold the Constitution, and while lay members of Congress might innocently, as I said, do violence to it by their votes, no member of the judiciary committee could ever be found in that class. If anywhere in our great country the Constitution is safe I believe it to be safe in this sacred circle, the home of its friends.

I am not a practicing lawyer, but I have read law sufficiently to convince me that this bill is clearly unconstitutional. I am satisfied that an attempt to single out a special article of commerce and to decree that in the case of the article thus singled out the operation of the interstate-commerce law shall be interrupted at the boundary line and give way to the police power of a State so that that article can not be delivered into the hands of the consignee, amounts to a denial of the rights guaranteed by the interstate commerce of the Constitution.

But this is not the question I came here to argue. For the sake of argument let us assume the bill to be constitutional. Then instead of its being a question whether it is legal or whether it is constitutional, it becomes a question whether it is just and expedient, in one word whether it is right. It is admitted, I believe, that there are things which may be perfectly legal and constitutional and yet are morally and materially wrong. In other words, from the viewpoint of eternal right our consciences may prompt us to condemn what no law forbids, and that proves that there are considerations higher than those prompted by the mere technicalities and constitutions.

Some weeks ago the Hon. Joseph Cannon, our great Speaker, said in the course of an address at Philadelphia—I merely give the substance of his remarks—that in former years the great danger in our country consisted in the possibility of the concentration of too great power in the National Government. The danger to-day was the very reverse, namely, that the people of the several States were prone to neglect the exercise of the powers which they have under their State constitutions, and prefer to appeal to Congress on all possible and impossible occasions, asking the national legislature to do for them what their own legislatures were fully competent to accomplish.

Mr. HENRY. That argument might apply to the pure-food law and the quarantine bill that has been reported.

Mr. BARTHOLDT. As far as the quarantine bill, where a question of national health is involved, I do believe in the principle of putting that in the hands of the Federal Government.

Mr. PALMER. The employers' liability bill and the antiinjunction bill also.

Mr. HENRY. Yes; it might be extended a little further.

Mr. BARTHOLDT. Is not the legislation sought by the pending bill exactly a case in point? According to many decisions of the Supreme Court the liquor traffic is completely subject to the police power of a State, and there can be no doubt but what it could be completely suppressed by that power.

The partial or complete failure of prohibition States to suppress it is admitted, but there can be but two reasons for such failure. Either the State is not exhausting its powers to that end, or the natural human desire for the consumption of liquor can not be suppressed—that is, its satisfaction prevented by law. In either case there is not the shadow of an excuse for interference by Congress. In the first instance, if a State can not furnish to this committee or to Congress complete proof of its inability to suppress the traffic referred to and of its entire good faith as to the exercise to the utmost limit of its own powers to that end, then, I claim, it has no moral right to invoke the power of Congress.

And if, on the other hand, practical experience has demonstrated all honest attempts at suppression to have been futile, simply because of the inefficacy of all law in the matter of preventing people from obtaining what they desire, then I say it is absolutely useless to provide additional legal machinery for that purpose, because to do so would have no other effect than to undermine, aye, destroy, the authority and dignity of national law in the eyes of the people. During the many hours I have listened here I have not heard a single argument on the other side which tended in any way to refute or break down the inexorableness of this situation.

What are the facts? Take the case of Iowa. Have the authorities of that State made every effort to suppress the liquor traffic? Have they exhausted their powers to do so? Not by any means. On the contrary the legislature of that State has passed a law—the so-called mulct law—which permits the traffic in counties desiring it under a system of fines which the dealers have to pay. In other words, the State itself legalizes the traffic in certain localities, and yet it comes here and asks Congress to aid it in the enforcement of its prohibitory law. This is the reason why I interrupted Judge Smith the other day when he argued here in favor of the passage of this bill, with the suggestion that he had not come with clean hands, figuratively speaking, of course.

If he had been able to show that his State was under a prohibitory law which was being strictly enforced in all parts, and that in spite of all honest efforts of the State authorities it was impossible to stamp out the traffic because of the importations of liquor from other States, then he might have a standing in court, or rather before this committee, but as a matter of fact there are breweries and distilleries running wide open in his State. Consequently, I say the continuance of the traffic there is certainly not due to a lack of national legislation, but to the operation of its own laws or their nonenforcement, whatever the case may be. Even if the Hepburn bill would ever be enacted into law, which under the circumstances I have just described would surely be an absurd and unwarranted undertaking, it would not help Iowa. And why not? Simply because it would be the easiest thing in the world to supply the dry counties from within its own boundary lines.

I can not resist the temptation to inject a little story here which illustrates most drastically what has been aptly termed the "hypocrisy of prohibition." It is contained in a letter which a St. Louis friend wrote me apropos my recent remarks on the floor of the House on the subject of prohibition. He writes:

If I had been aware that you were making a speech on prohibition, I would have given you a prohibition story of two brothers, both farmers in Iowa. John, the oldest, visited his younger brother Jake one day, and came just in time for dinner. Invited to partake of their meal, the lady of the house said: "Uncle John, we are aware that you use liquor in your family and at meal time, but you must excuse us, we only have water on the table; you know we are strict temperance people and do not make use of anything to drink which is intoxicating." Uncle John said, "All right, Jane, I am satisfied," and so the dinner passed off very pleasantly.

After dinner brother Jake and his two grown sons went out to their farm work, and as soon as they were out of sight Jane addressed Uncle John: "By the way, Uncle John, I know you are used to taking a drink; I keep a little bottle in my cupboard for medical purposes. My husband is such a strict prohibitionist that he will not permit anything to come into the house, but I believe in keeping some for medical purposes." After Uncle John had taken his drink he went out to the stable to take a look at the horses and cattle and found his brother busy feeding them. When he announced his presence, brother Jake says: "John, I am glad you are taking a look at our cattle and horses, but by the way, as you are used to taking a drink of whisky at home, I have a private bottle here that I keep for medical purposes. You know the old woman is very strict on temperance, and we allow nothing in the house." Uncle John and Brother Jake had their drink, and then John went to look at the growing crops and found the oldest son engaged in plowing corn.

Seeing his Uncle John coming toward him, he halted his team and said: "Well, Uncle John, I am glad you are taking a look at our farm. The crops are looking well. But, by the way, Uncle, you know the old folks are terrible on temperance and will not allow us young folks anything to drink in the house, and so I keep a private place in the field, secreting a box in the ground, so I can take a drink when I don't feel well, just for medical purposes only." Uncle John, having taken his third drink of whisky, went over to the other side of the farm where the younger son was working and was treated in the same manner to his fourth drink. The prohibition farm had four private saloons, to be used for medical purposes only.

MR. BIRDSALL. Where was Uncle John from; was he from Missouri?

MR. BARTHOLODT. I suppose he was from Missouri. He might have been from Iowa.

MR. LITTLEFIELD. That story is located for convenience in a great many places.

MR. BARTHOLODT. It is safe to say—and gentlemen in this room, if they were disposed to truthfully relate their own experiences, would bear out my assertion—that the same conditions prevail in nearly all prohibition States. And if this be so, why should it be the province of Congress to interfere? Why should the great national law-making body stoop to regulate the habits of the people and interfere in the affairs of the separate States which are perfectly competent to work out their own salvation?

Sumptuary legislation is odious at best; if undertaken by State legislatures it is a wrong and unjustifiable response to the appeals of people who have formed a habit of minding everybody's business but their own, and if seriously considered by Congress it is a humiliating spectacle and a perversion of the real functions of this greatest of all law-making bodies.

What is the sum and substance of the arguments advanced by the prohibitionists, who alone advocate the passage of this measure? You have heard the same dingdong so often that it is hardly necessary to repeat it. The States should be permitted to carry out the objects of their laws. As it is, their broth is being spoiled by shipments from the outside. How disgustingly hypocritical and unutterably absurd in the light of actual conditions as I have described them! But this is to play on the sensibilities and to catch the support of the states-rights man.

Mr. LITTLEFIELD. I suppose it is the individual instance to which you refer. Do you really seriously characterize, for instance, all people in my State in that manner? Do you think that is quite a proper thing to do?

Mr. BARTHOLDT. No; I do not; but I have heard from so many travelers in Maine that they can get all they want to drink; in fact, I have the evidence of one to the effect that the very first question asked him upon arriving at a hotel in Portland, Me., was "What do you want?" They had a private closet with whisky in it—

Mr. LITTLEFIELD. Everybody will have to concede that there is no kind of legislation that can absolutely stop the sale of intoxicating liquor—

Mr. BARTHOLDT. Unless you provide that the drinking of it shall be prohibited.

Mr. LITTLEFIELD. Then you could not stop it; you could not eliminate it under any circumstances. But what I want to get at is this. Your assertion was pretty general. I was wondering whether you meant it to apply to the people in my State as a whole. The assertion has been made a great many times about the hypocrisy of the people who feel that this is the proper kind of legislation, and I wanted to know whether you wanted to apply that as a general thing to the people in my State.

Mr. BARTHOLDT. I want to say that a great number of the people who are advocating the cause of prohibition are thoroughly sincere, and I will go even farther than that: I will say that it is desirable to limit as much as possible the use of liquor, but I do not believe in legislation trying to do that. I hold that there is another way of accomplishing that object, and that is to educate our boys to the true ideas of temperance. I believe that education alone can effect that. And I will cite an instance from my own personal experience. When I became 17 years of age, my father said to me: "Richard, if you wish to take a drink, if you wish to smoke a cigar, the doctor having said you are now old enough to smoke, go and take it," and that fact prevented me from doing it; because it was open to me, and because I could reach it any time I wanted it, I didn't desire it.

But this attempt that you are constantly engaged in, to suppress it by law, by the police power, and in every way possible, that course makes people desire it who otherwise would not desire it, or, in the language of Bob Ingersoll, if the Mississippi River contained nothing but whisky, nobody would want whisky. In other words, it is a question of education, not a question of legislation.

Mr. LITTLEFIELD. I hope Bob was nearer right on his theology than he was on that assertion. My only suggestion was this. I do not make it personal. I do not remember that anybody who has

been here urging this legislation has said anything unkind, or that in any way could be construed as a reflection on the people who oppose the legislation—and there is an honest difference of opinion about it. At least nobody could charge me, I think, with having said anything unkind about the opponents of the legislation; but I have sat here in this committee room and heard over and over again these general, uniform charges of hypocrisy on the part of everybody who supported the legislation, and I did not think you would probably want to stand behind so broad and sweeping a charge as that.

Mr. BARTHOLDT. Is it not natural that the people who come from the masses of the people and who are forming their opinions by what they read and see, is it not natural that they should form such opinions when they find that, for instance, in the matter of the canteen, nearly the whole House votes in favor of abolishing the canteen when they are satisfied—the members of Congress are satisfied—that the canteen is absolutely necessary to enforce discipline in the Army; when the unanimous sentiment of the men who run the Army of the United States is to the effect that the abolition of the canteen was the greatest outrage and the wrongest thing that has ever happened in connection with the Army.

Mr. LITTLEFIELD. I fundamentally disagree with you on both propositions—

Mr. BARTHOLDT. I know you do.

Mr. LITTLEFIELD (continuing:) And I am willing you should entertain your view, but I want to state that in my judgment I do not think the facts sustain the assertion you make, and I think that will wash out. Of course, I concede your right to entertain your view, but when you make that general assertion my judgment is that the facts do not begin to sustain you.

Mr. BARTHOLDT. I was going to argue to show that it was quite natural to form the idea that there is hypocrisy involved in this case when we see men drinking who then go and vote the other way.

Mr. LITTLEFIELD. I have no objection to their continuing the assertion under the circumstances, and I shall continue to treat them as politely as I have in the past.

Mr. BARTHOLDT. I believe in practicing what you preach, and that gives us a right to charge hypocrisy—

Mr. LITTLEFIELD. I have no objections to their continuing the sweeping, broad assertion, if they want to, as I said.

Mr. BARTHOLDT. And of course what I say about hypocrisy is impersonal altogether. I said that their argument is that the States should be permitted to carry out their laws. This is simply a play on the sensibilities, and to catch the support of the States-rights man. How narrow the vision of these apostles of prohibition must be when they can not even see that the safety of the doctrine of States rights lies in the rejection instead of the passage of this bill. If you say, my Southern friends will allow the nation to supply the force which the State fails or refuses to exercise, though the Supreme Court says it is competent to exercise it, then I predict it is only a question of time when you will be entirely governed from Washington instead of from your State capitals.

But you say no; in this case we want the national power to halt at our boundary lines in order to give full sway to the police power

of our State. Well and good, but don't you see that the supremacy of your police power would be more firmly established and better demonstrated by conquering the evil in spite of the concurrent operation of the interstate-commerce law? The evil you complain of exists not because of a lack of State authority, but because of a failure to fully exercise it.

One other point, Mr. Chairman, that I desire to submit to the calm consideration of the committee. It has been argued here that the question of prohibition is not involved in this bill. Honestly, these people who make this assertion must take us for fools. The National Reform Bureau which, by the free use of the mails—I shall not now go into that—has worked up the artificial sentiment in favor of this measure, is what? It is the national prohibition lobby maintained here year in and year out to influence and intimidate Congressmen. No one but pronounced prohibitionists have appeared in favor of the bill, and no one but outspoken opponents of prohibition have appeared against it. But aside from that. The bill is intended to aid in the enforcement of prohibitory laws and to prop up the tottering system of prohibition wherever it is enforced.

This is admitted by both sides alike to be its only object. To say, then, that the principle of prohibition is not involved is the same as if it were claimed that a bill fixing the rate of duty on imports had nothing to do with the tariff. You may put it on the mere technical ground of enabling the States to enforce their local laws. What feeble organisms these States have gradually become! But you can not escape the responsibilities of passing on the merits or demerits of prohibition in taking action on this measure. There is absolutely no getting around the fact that the members of this committee or the House who vote for this bill go on record as favoring and sanctioning the principle of prohibition. Favorable action upon it will have the effect of injecting into national politics an issue which heretofore has been foreign to it, because never before in our history has Congress so directly dealt with this question, and it means the injection of the same issue into the campaign of every candidate for Congress.

Mr. LITTLEFIELD. What is the reason they did not do the same thing when they passed the Wilson law? The Wilson law on its face was undoubtedly intended to do the same thing as this is, and until the Supreme Court held otherwise everybody thought it did.

Mr. BARTHOLOTT. I do not look upon it in that light at all. I think the Wilson law was right and the decision of the Supreme Court sustaining it was right.

Mr. LITTLEFIELD. This bill undertakes to do this, Brother Bartholott. It practically undertakes to put the legislation of the United States just where everybody reading the Wilson law supposed it was put until the Supreme Court of the United States, with great ingenuity, discovered the other way. I defy any man that reads that law to say he would not reach the conclusion that that law is meant to reach what it is intended this pending legislation should reach. Of course the Supreme Court reached another conclusion—in my judgment by a very artificial construction—but on its face this Wilson law meant exactly what this pending bill is meant to cover. Where was any disturbance created in the country by the passage of the Wilson law—political or otherwise? I haven't heard of any.

Mr. BARTHOLDT. The Wilson law provided that no shipment of liquor could be seized before its delivery into the hands of the consignee.

Mr. LITTLEFIELD. No; it provided nothing of the kind. Here is what it provided. Here is what it says:

That all fermented, distilled, or other intoxicating liquor or liquids transported into any State or Territory or remaining therein for use, consumption, sale, or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

"Shall upon arrival," that is what the law said. The court said that they did not arrive until they reached the consignee, and nobody dreamed of that until the court so held. Now, where was the political disturbance that occurred in the country after the passage of that law, containing that plain language?

Mr. BARTHOLDT. I want to call Mr. Littlefield's attention to the difference. The Wilson act was passed without the people being practically aware of it. They have now been aroused; not only have they been aroused but they have become indignant at these constant attempts on the part of a certain element to restrict the personal liberty of citizens, and if nothing was said at the time that law was passed that is no evidence that there is not a very strong feeling in this country against this legislation. This feeling has aroused; we have to deal with it; we will be confronted with it when we go home to our constituents.

Mr. HENRY. It was first presented in 1888 and was discussed at length. It then failed. They did not get it through for two years after that. In 1890 it was passed, and there were elaborate reports made by Senator George and other Senators on that proposition, and it was discussed very fully, I think you will find, if you will investigate that.

Mr. LITTLEFIELD. And after that the Supreme Court in *Leisy v. Hardin* surprised the legal minds of the world in their decision and overruled practically every decision of the Supreme Court on that subject that had been rendered up to that time. Of course, that does not militate one way or the other, except upon the question of the pronounced disturbance that is likely to take place in case this bill is passed.

Mr. BARTHOLDT. It exists now.

Mr. LITTLEFIELD. I grant you that there is more agitation about it now than there was then.

Mr. BARTHOLDT. Of course, some of us may regard this disturbance as desirable, and for one I am not afraid of it. I am not afraid to meet the issue at home, but others may not feel quite so comfortably about it.

Mr. LITTLEFIELD. I do not think anybody wants to make an unnecessary disturbance about anything.

Mr. BARTHOLDT. Certain it is that this question will wipe out old party lines, and for whatever action is taken here or in the House the credit or blame will not be laid upon parties but upon individuals. Hence it will do for any part to play politics, for one to try and put

the other in a hole, for I know the temper of the people whose representatives you have heard here—and perhaps I am in a position to speak advisedly on this matter—their political action this fall and possibly in the future will not be determined by the Republican or Democratic label, but by the action which individual members will take on this bill. The National German-American Alliance is an organization with a membership of a million and a half voters from all parts of the country, and behind them stand numbers again as large.

The alliance is not organized on political lines, but its members are ready to take independent political action. They have watched with rising indignation the tendency in our country to throttle personal liberty, and the subserviency of both parties to the illiberal and fanatical element and its unreasonable demands, and have come to the conclusion to assert their political rights in defense of their cherished ideals and irrespective of any other question which the two parties may bring up. And let me say further, Mr. Chairman, it is a mistake to suppose that this new party of personal liberty is actuated by any material interests. Aye, the supposition is an insult to the men who are engaged in what I regard as a purely ideal movement, a movement which has for its object the defense of American liberty and its well recognized guaranties of individual rights against the un-American, undemocratic, and fanatical attempts to tyrannize the majesty of the individual.

It is also a mistake to suppose that the views which were expressed here on this question were confined to Americans of German birth or descent, though it is true that the majority of those who appeared before you in opposition to this bill belonged to that element. Perhaps the German feels more strongly on this question than others, because love of individual liberty is his national trait, and from this trait, let me add, parenthetically, has sprung all the liberty which is the blessing of the world to-day. Not from Rome do these ideas emanate, as some erroneously suppose, but from the forests of Germany. And it would be an insult to the American people if from the fact that the opposition to this bill was almost exclusively confined to Germans here you were to draw the conclusion that it is really confined to them.

There are millions of Americans who will vote right on this question when it is presented to them in its proper light, and I have so much confidence in the development along truly liberal and American lines of this country and its destiny as the lasting home of the free to be convinced that the spirit of intolerance and hypocrisy will vanish when once the banners of the friends of liberty are unfurled.

I sincerely hope, Mr. Chairman and gentlemen, that no further action on this bill may be taken.

The CHAIRMAN. Do you desire to be heard, Senator Thurston?

Mr. THURSTON. I am merely an onlooker. I am general attorney for some of the express companies of the United States. I have not been asked to come here to say anything on this legislation, but possibly before you conclude your hearings I might like to say a few words about some features of the Williams bill in regard to its constitutionality, and also with respect to another feature of it, which, I think, should be amended in some minor respect if it should be reported.

The CHAIRMAN. You are not ready this morning, as I understand?

Mr. THURSTON. No; I just came in from Pittsburg this morning, and I have no definite advice from my clients, and if I had anything to say I would prefer to say it at some other time.

Mr. LITTLEFIELD. The hearings are likely to be closed by Tuesday next. Will that suit your convenience?

Mr. THURSTON. Oh, yes; if I should have anything to say it will not exceed ten minutes. I don't know but what I could say what little I care to say right now.

The CHAIRMAN. We will be glad to hear you, then.

STATEMENT OF EX-SENATOR JOHN M. THURSTON.

Mr. THURSTON. Mr. Chairman and gentlemen, I wish to say in advance that none of the express companies, so far as I know, desire to be represented before this committee in opposition to the proposed legislation. Their situation is not a pleasant one to themselves. They are common carriers, and in the absence of any legislation limiting their obligation to the shipping public they are undoubtedly obliged to take liquors the same as any other merchandise that is not under the ban of any general law of the land regulating interstate commerce; they are undoubtedly obliged to take it upon the same terms that they take other merchandise, and they would subject themselves to damage suits of all sorts if they undertook to put in force any regulation which limited their duties as common carriers.

And I may say here, while I can not speak for all the express companies of the country, I can say at least for one such company, that while legislation on this subject might somewhat interfere with their revenue—to what extent I do not know—that it might not be objectionable, for the reason that at the present time it is a very serious matter the situation they are placed in; their shipments in some of the States are seized and have been seized upon arrival at destination and before delivery, and they are already now confronted with a great deal of litigation from different parts of the country, a litigation which they certainly do not solicit or invite.

Referring to the Williams bill, however, that I wish to speak especially upon. It seems to me in the first place that it is not a constitutional act. Until liquor is generally placed by the law of the nation under some ban to distinguish it from any other merchandise, the transportation of it is certainly not unlawful and the obligation to take it by the common carrier is exactly the same obligation that lies on the common carrier to take any other merchandise, at the point where it is shipped, from which it is shipped.

Now, my judgment is—it may not be a mature judgment, but my judgment is—that it would be unconstitutional for Congress to single out any one article of merchandise that is not under the ban of the national law and provide that as to that one particular kind of merchandise the common carrier shall enforce a rule that it did not enforce as against any other merchandise received by it. That is, to deny them the right or really to compel them to enforce a rule that they must take shipments of liquor sent from a State where the traffic in liquor is legal and take it with a demand of prepayment of charges in advance; and I think that would be unconstitutional unless that same requirement was made as to every article of merchandise that they received and transported.

Mr. LITTLEFIELD. What provision of the Constitution, in your judgment, does it contravene?

Mr. THURSTON. I think it is class legislation.

Mr. LITTLEFIELD. Then that provision of the Constitution that provides that every person is entitled to equal protection of the law—would it be under that?

Mr. THURSTON. I think so.

Mr. LITTLEFIELD. That only applies to the States. That is found in the first section of the fourteenth amendment, which expressly provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States * * * nor deny to any person within its jurisdiction the equal protection of the laws. To be perfectly frank, I had not any doubt myself that that provision, applying to the Federal Government, was to be found in the Constitution; it ought to be, but I can not find it. I only wanted to get your notion of it.

Mr. HENRY. Do you know of any decision or authority holding that liquor is not a legitimate article of commerce; don't they all hold that it is a legitimate article of commerce?

Mr. THURSTON. There is no question about that. I don't know but what Congress would have the right to pass laws making liquor contraband; I don't know about that, it is doubtful in my judgment, but in the absence of any national law a bottle of liquor in the State of New York sold there under the authority of law is undoubtedly a legitimate article of commerce; there is no question about that. That has been held repeatedly, and that is really a statement of first principles.

Mr. LITTLEFIELD. There is no doubt about that proposition.

Mr. THURSTON. And while I am not prepared to make a thorough constitutional argument here, I do think that there are provisions in the Constitution of the United States which would prohibit Congress—or perhaps I might say that there is no authority given Congress under the Constitution of the United States to discriminate and compel companies to discriminate in the terms and conditions upon which they shall receive and transport legitimate articles of commerce. It might be that as to dynamite, which would be dangerous along the line, they might make certain requirements as to the cars in which it should be transported, or something of that sort, or anything that would be dangerous to the lives of people and might involve destruction of property, while the article was in process of transportation; but that rule would not apply merely to an article which a State might deem was injurious to the welfare of the people when it has arrived and applied to individual use.

Mr. LITTLEFIELD. Does not the Champion case go pretty close to that? That is the lottery ticket case.

Mr. THURSTON. Well, possibly it does, possibly it does. Now, speaking for myself a little further, I do not think that there is any real reason why a penal provision should be enacted against the transportation companies of the United States in regard to this transportation of liquors. I think that the attention of Congress, if it is to be directed at all, should be along the line of permitting the States in whatever way you please, when shipments reach the States, to deal with the transported article and that the action should not be di-

rected in a general way against the express companies by reason of their receiving and transporting goods of this character under the same terms and conditions that they do all other goods. Speaking at least for one express company, they would be entirely willing to-day, if they thought they could without legal liability, to put in force a rule exactly such as is provided for in this Williams bill, they would be more than willing.

Mr. BRANTLEY. I have a letter from the general counsel of one express company advising me that for two years his company has refused to handle liquors C. Q. D. on his advice.

Mr. THURSTON. I presume that is true, but there are certain other companies whose legal advisers say to them, and I believe it is the law, that they can not refuse, they can not put in force an order of their own in regard to the terms and conditions on which they will receive one class of merchandise which is not dangerous along the line of transportation, which requires no other care, no other consideration than any other kind of merchandise, that they can not put into force a rule as applied to that which does not apply to all their shipments of merchandise without subjecting themselves to damage suits from the persons who desire to ship.

Mr. LITTLEFIELD. Does that go as far, Brother Thurston, as preventing them from insisting upon payment of the transportation charges in advance?

Mr. THURSTON. No; but I think they must make the same rule as to all, that is the only point.

Mr. PALMER. Upon what principle is that theory grounded?

Mr. THURSTON. It is the general ground of your railroad rate bill, the same conditions must be given by every common carrier to all shippers.

Mr. PALMER. But they could say all shippers of whisky should pay their freight down and all shippers of other things could be trusted.

Mr. HENRY. Was it not expressly decided in the case of Bowman v. The Railroad that they must accept it as other goods?

Mr. THURSTON. That case only decided the general principle that they must accept this merchandise the same as any other, but I think the broad rule of law laid down in that case goes to the full extent of saying that they can not discriminate in their methods of doing business on any ground of picking out an individual article of any kind and enforcing one rule as to that and not as to all classes of merchandise that they transport.

Mr. BRANTLEY. Do not all common carriers classify the freight they are to handle?

Mr. THURSTON. Yes.

Mr. BRANTLEY. And one rate for one class and another rate for another class?

Mr. THURSTON. But that does not go to a question of classification at all. A railroad company can classify a large district, and separate rates under a single classification; they can in certain instances provide as to what kind of cars certain merchandise shall be shipped in. That is for the safety of transportation along the line. They can also provide as to how certain kinds of trade shall be done up.

Mr. CLAYTON. Do they not require now on certain perishable goods shipped by express that the freight be prepaid?

Mr. THURSTON. Yes.

Mr. CLAYTON. Could they not require that in the case of liquor as well?

Mr. THURSTON. No; that does not come under that rule.

Mr. CLAYTON. What is the difference in principle?

Mr. THURSTON. The difference in principle is this. You take a perishable article and transport it along a railroad line on a C. O. D. bill of lading, and the goods may not be in a condition so that the goods themselves would secure the railroad company in the collection of the bill.

Mr. CLAYTON. Could not your company say then that it may subject you to annoyance or seizure of the liquor when you take it into the prohibition State, and for that reason could not your company make a rule requiring free payment on such shipments?

Mr. THURSTON. I do not think that would be an element that could be considered. I think the only question of classification and the only question as to the rules that must be laid down in respect to goods covers the mere matter of transportation; it begins when the goods are received and ends when the goods reach their destination, and I do not believe that it would be possible for them to adopt one rule with respect to this class of merchandise that they do not as to others. I think I can say with authority that some of the express companies would be entirely willing to-day to make such a rule as that if they thought they could do it legally and apply it only to this class of goods.

Mr. LITTLEFIELD. I judge your companies would rather welcome the passage of this legislation, which proposes to authorize the States to exercise their own police powers within their own borders.

Mr. THURSTON. I am not saying that, but I am not here objecting to the legislation at all. As a matter of fact, one of the great express companies at the time of the Louisiana Lottery, when it was a very profitable business for them to take the lottery tickets and transport them into different parts of the country, when it was held as a matter of law that they were required to take them (until Congress acted in the matter), refused to take them. They did not subject themselves to any damage suits in that respect, for the reason, I suppose, and the only reason, that the lottery company in Louisiana did not care to go into court over the question of damages and make a disturbance over the affair.

Mr. LITTLEFIELD. They took the hazard of possible suits?

Mr. THURSTON. They took the hazard of suits, yes; and they did it because they were in harmony with the sentiment of the country at large on the question of lotteries. And I am not here now even objecting to the Williams bill, except as I want to see that whatever legislation is enacted will thoroughly protect these express companies when it comes to being enforced, and, as I said, I do not see why they should be treated as if they were doing wrong or were proposing to do wrong, and be made the subject by this legislation of prosecution in case they did not happen in all instances to strictly comply with the law.

And another suggestion I was about to make as to the language of this bill. The first section, that express companies and other common carriers are prohibited from importing into the United States from

any foreign country. Now, I call your attention to that language, and I ask you as to whether that is not a general prohibition, not limited by the after clause of the act with respect to liquor transported from one State into certain sections of another State; whether the bill as it now stands, as it is drawn, if that is not in the first place, standing separately and distinctly by itself, an absolute prohibition from the importation into the United States from any foreign country of any liquors on a C. O. D. basis; and if the bill be reported I would suggest a very careful inspection of the language of the first section and an amendment, if you deem it necessary, so as to make it very clear that you do not lay down any general prohibition against a C. O. D. shipment from a foreign country into the United States.

Mr. PALMER. That is what it looks like; there is no doubt about that being the construction now.

Mr. HENRY. Yes; I do not think there is any doubt about that.

Mr. THURSTON. I do not know that that affects the express companies, but if that is what is intended, as a public-spirited citizen I should think that was very unwise legislation.

Now, the only point I desire to suggest is this. Here is an absolute prohibition, and a penalty attached for its violation for transporting C. O. D. any spirituous, vinous, or malt liquors from one part of a State into a section of another State where it runs in conflict with certain laws. I think at least that that provision should be modified along the same lines as the general legislation of the different States is, and as the legislation of the District of Columbia is in regard to the sale of liquor to minors. There ought to be some such word as "knowingly," because without it shippers of liquor can put up liquors under all sorts of forms and under some other classification, and the common carrier can not open it; the common carrier does not know what it is taking, the agent at the receiving station can not go into a process of inquiry and cross-examination of the man who brings his package in there; brings a box there.

It is marked one thing and it may contain any other thing. The common carrier doesn't know it and can not know it, the employee of the common carrier doesn't know it, the man receiving it does not know it, the employees engaged in transporting it do not know it and the man delivering it to the consignee does not know what it is, and the company ought not to be held liable penally for unknowingly violating a statute of this kind. It is like the case of selling to minors. You can not tell when a young man comes into a liquor place whether he is 20 years of age or whether he is 22 years of age; he may look anything. A man 25 may not look over 18 or a young man 18 may look 25, and if appearances are such that the liquor is sold in the honest belief or in the absence of any contrary proof that the young man is 21 years of age it has never been the policy of the law to inflict a penalty under circumstances like that on a man who acts with apparent honesty and with the purpose to abide by the law; and so I say here there would be no question and nobody will anticipate that there will be any question—

Mr. TIRRELL. That is not the law in Massachusetts.

Mr. THURSTON. Possibly not.

Mr. TIRRELL. And never has been.

Mr. THURSTON. Possibly not; it is a law of Congress that you have enacted for the District of Columbia.

Mr. TIRRELL. The Massachusetts law makes it incumbent upon the seller to know about it; he takes his chances.

Mr. THURSTON. Well, I am not arguing that in that particular case, that that law of yours is not a wise one, because you are engaged in a matter there that affects the whole moral welfare of the community—selling liquor to a minor—and in this case the express companies do not even have the opportunity that the liquor dealer has to inspect the article or to investigate; they can not stop and investigate as to the contents of a package, it would be utterly impossible and nobody will believe, I think, for a single moment that they will seek to evade the law, if the law should be enacted, by taking shipments so disguised with any knowledge on their part that they are disguised, and I don't think that this law should be made so drastic as it is now drawn in that respect.

Mr. PALMER. Publicity is very fashionable nowadays. How would it do to put in a provision that every fellow who ships a box of liquor should put on the outside what is in it?

Mr. THURSTON. Now you are getting down to business. I think that might be a good idea, and none of the express companies so far as I know would object to your making it a penal offense or a misdemeanor for a man to ship liquor disguised and marked something else.

Mr. PEARRE. Not being permitted to examine the package at all when it is delivered to them, would it not destroy the effect of the law entirely if the word "knowingly" were put in; in other words, could not the shipper of whisky take advantage of such a provision in the law—"knowingly"—to nullify the law?

Mr. THURSTON. As Mr. Palmer says, it might be well to compel the shipper to designate what a shipment is.

Mr. PALMER. The complaint is that the express companies ship a hundred jugs of liquor to John Smith or Richard Roe or anybody else at some station in Iowa, and then let their agent sell it to anybody who is willing to pay the charges on it; that is what the express companies are doing, and in that way every agent who does that is a retail liquor dealer.

Mr. CLAYTON. Will you let me read a letter sent to Mr. Hepburn of Iowa a few days ago?

Mr. THURSTON. Certainly.

Mr. CLAYTON. The letter is addressed to Mr. Hepburn and is dated Sylvan Grove, Kans., February 26, 1906.

SYLVAN GROVE, KANS., February 26, 1906.

HON. HEPBURN, M. C.,
Washington, D. C.

DEAR SIR: Inclosed find some literature and proposition sent me by a Kansas City, Mo., whisky firm. This is only one of many such propositions I have received to serve the liquor interest. Every effort is made by these concerns to defeat the purpose of our prohibition laws. The people here deem the Hepburn-Dolliver bill to eliminate the C. O. D. liquor traffic from prohibition States of utmost importance, and I would urge that no stone be left unturned to accomplish its passage.

Yours, truly,

E. L. BLOMBERG, Agent.

ASSOCIATED INDEPENDENT DISTILLERS
AND WINE GROWERS OF AMERICA,
Kansas City, Mo., February 7, 1906.

Mr. E. L. BLOMBERG,
Sylvan Grove, Kans.

DEAR SIR: Some weeks ago we wrote you asking whether or not you would be interested in a proposition we wished to make you whereby you could greatly increase your income, and which would in no way interfere with your position. We inclosed you a postal card for reply. We received the postal very promptly, stating that you were interested and would be pleased to hear from us. We took great pleasure in submitting same to you, but have as yet failed to receive a reply as to whether or not you cared to accept it, although we have written you several letters asking you to kindly advise us of your decision.

We can not believe that you would pass up an opportunity of this kind, and are writing you to-day asking that you again consider our proposition. Consider it carefully, and you will note that we are not asking you to do anything that in any way infringes upon your duties as express agent. All we ask is that you kindly furnish us with the names of parties who are, or have been, receiving shipments of whisky through your office. We will then write these parties letters, sending them our circulars, which contain some excellent offers, and request that they give us the pleasure of sending them a trial order. Of the business we receive in this manner you receive a benefit, for, as stated in our former communications to you, we will make you a present of 50 cents for each package delivered.

Remember, we are not paying you a commission for making delivery of our goods, but are merely making you a present to show our appreciation of your efforts in our behalf in seeing that our goods are delivered promptly to the man to whom they are shipped.

Some express agents have received as high as \$150 in one month. We submitted our proposition to another agent at the time we submitted it to you, who accepted same and immediately sent us a large list of names. We wrote these parties and were able to secure a great deal of business from them, and last month we had the pleasure of sending this agent \$117.50. You may not be able to do this much business in one month, as the traffic in our line of business may not be so great through your office, but it makes no difference how small it may be. Can you afford to throw it away?

Thanking you in advance for a favorable reply, we beg to remain,
Yours, very truly,

M. CALMAN, *President.*

CONFIDENTIAL.

We have assisted several hundred express agents to materially increase their monthly income, and we can and will increase yours without taking any of your time and without any interference with your regular duties. Now, will you let us?

OUR PROPOSITION.

We will give you 50 cents on every package of our goods which passes through your office—not for one month, but for as long a time as you care to act as our agent. We don't ask or want you to solicit orders for us. All

we want is to secure your cooperation in the execution of a plan by which we expect to produce results in the way of new customers. We want new business in your locality, and we have come to you with our proposition for the reason that we realize we can turn the information in your possession into dollars and cents for ourselves and for you.

THE NAMES OF WHISKY BUYERS.

You know the name of every man who buys our kind of goods away from home. It all has to pass through your hands. This business is going through your office now without returning you one cent, and, whether you believe in the whisky business or not, you can not stop the importation of "wet goods" into your community; moreover, you are under obligations to your company, because of your position, to make the same delivery of such packages as you do of other express.

Now, we want to get some of this business (and we will get it if you will help us), and we are willing and anxious to pay you 50 cents for every package which we ship to your station C. O. D., and which is taken out by the consignee. What we want you to do is this: Send us a list of the names of all the people who have had a whisky shipment during the past year, or as many as you can, and we will endeavor to get these people as customers.

WE WILL SEND A SAMPLE FREE.

To all of the people whose names you present us with we will make them a proposition to send them a good-sized sample bottle of our goods free. We believe that the larger per cent of these people will send for the free sample, and after they have tried our goods we don't think we will have any difficulty in making them permanent customers. Our goods are far superior to any being sold by other houses from 20 to 30 per cent higher in price. We know this to be true. At any rate, we are willing to risk sending a sample free in the hope of getting their business. We would not do this if we did not have perfect faith in our product.

YOUR PROFIT.

Your profit will be commensurate with the amount of business we get from parties whose names you send us. Upon every shipment you get 50 cents. You do not have to risk to our honesty to get your money or wait upon our pleasure to send it to you. We will permit you to make out a new C. O. D. wrapper on each shipment for the amount specified therein, less your commission; or we will send to you some coupons like the inclosed, which we will accept for the amount of your commission with the balance of the returns, or we will send your commission at the end of the week or the month by draft or registered letter, whichever way suits you.

IN CONCLUSION.

Now, you know how much business is going through your office. How much would it amount to in a year if on the greater portion of it you were getting 50 cents a shipment? Run over your books and figure this up and you will be surprised to see what it will amount to. We have one agent who delivered 1,500 packages last year. Think what this meant to him. And he was doing no more than was required of him by his company or what he would have done without any understanding with us. Our plan does not conflict with any rule or regulation of your company, and you are not violating any law of the land.

Te want to make you money. We will make you money; just give us a chance. Send us the names; leave us to get the business and increase your income.

ASSOCIATED INDEPENDENT DISTILLERS
AND WINE GROWERS OF AMERICA.

M. CALMAN, *President.*

Mr. CLAYTON (continuing). That is the business that is complained of and that is the business that Mr. Williams apparently seeks to break up by the bill he has introduced; and it is not legitimate business.

Mr. THURSTON. I have no doubt about the right purpose of this bill, and business people who would undertake to make such arrangements with agents of express companies are engaged in a very vicious practice; and I think it would go without saying that if an express company or one of the railroad companies in the United States discovered that one of their agents was engaged in anything of that sort he would not keep his place two minutes.

I don't think there is an express company in the country that would tolerate any action of that sort on the part of their agents, and they are not soliciting this business, and they are not objecting to any just and fair regulation of it as in your wisdom is right and will accomplish the moral purpose of your legislation; but if anybody is going to be penalized it at least ought to be the man who ships liquor in a package under a false designation and in such a package that the express company where it is received or where it is delivered can not ascertain what is in it, the only evidence of what it is being shown by the bill of lading. If it were otherwise they would have to adopt a rule that they would have to open every box of merchandise that was shipped and examine the contents before they would accept it.

Mr. PEARRE. Have you examined the Hepburn bill?

Mr. THURSTON. Yes.

Mr. PEARRE. Do you present any objections to that bill?

Mr. THURSTON. I have no personal objection to that bill and I do not know of any interest that I represent that has any. I am not authorized to say that anybody I represent is in favor of that bill, simply because it has not been so stated to me.

Mr. PEARRE. But you are not offering any opposition to it?

Mr. THURSTON. No, sir; I am not offering any opposition to it at all.

Mr. CLAYTON. Calling your attention to the so-called Hepburn-Dolliver bill as amended and as reported favorably from this committee last session—do you remember that bill?

Mr. THURSTON. No.

Mr. CLAYTON. It is pretty much the same as the present Hepburn bill, except that it had an amendment to it which seems to be omitted from this bill. When you get through with your testimony I will get you to read it, and then recall you. It has section 2 that I believe was omitted from this bill—

SEC. 2. That all corporations or persons engaged in interstate commerce shall, as to any shipment or transportation of fermented, distilled, or other intoxicating liquors or liquids, be subject to all laws and police regulations with reference to such liquors or liquids, or the shipment or the transportation thereof, of the State or Territory in which the place of destination is situated, and shall not be exempt therefrom by reason of such liquors or liquids being introduced therein in original packages or otherwise; but nothing in this act shall be construed to authorize a State or Territory to control or in anywise interfere with the transportation of liquors intended for shipment entirely through such a State or Territory and not intended for delivery therein, or to control, or in anywise to interfere with the delivery in the State or Territory of any bona fide interstate commerce shipment of liquor or liquids intended solely for the personal use of the original consignee, and not intended for sale in said State or Territory in violation of the laws thereof.

Mr. THURSTON. That last part being the amendment?

Mr. CLAYTON. Yes, sir.

Mr. THURSTON. All I can say about that is that if I lived in a prohibition State I should be very glad to have that amendment.

Mr. CLAYTON. You have read the case of *Vance v. Vandercook*—you are familiar with that?

Mr. THURSTON. I do not care to discuss the general policy of this legislation. I believe myself in the right of States, as far as they can, taking care of their own local conditions; I have never individually been in favor of prohibition, and have fought that issue out in my State, but I have always been in favor of the strictest regulation of the liquor traffic and local option, each community deciding for itself and its own people as to what they will do as to the sale of liquor.

Mr. BRANTLEY. I would like to ask you if your attention has been called to another bill, 16479—one that I introduced—that also affects express companies?

Mr. THURSTON. No; it has not.

Mr. CLAYTON. That is intended to meet the evil, to divorce the transportation from the sale of liquor.

Mr. BRANTLEY. To let the State control the matter of selling it.

Mr. THURSTON. I would like to look at that a little before I would express my views on that.

Mr. BRANTLEY. I would be glad if you would. In most of the States the courts held that the place of delivery is the place of sale; of course, the United States Supreme Court differs with that.

Mr. THURSTON. Yes; it differs in regard to this special subject on that line.

I do not know of any further views I can suggest. As I said before, I want it distinctly understood that there are no clients of mine who are objecting to general legislation such as you may deem it wise to effectuate, the purpose you are seeking to accomplish. We would only like to be protected constitutionally and legally and not be subjected to any severe burdens or penalties under any legislation for the commission of anything which we might do without having the power to protect ourselves.

Mr. BIRDSALL. I wanted to get your objection from the constitutional point clearly in my mind. If I understand your position, your objections are substantially these: That an express company, like a railroad company, being a common carrier, when it offers its services to the public, offers it to all upon equal terms, and every individual has impliedly a right to this service upon the same terms?

Mr. THURSTON. That is it.

Mr. BIRDSALL. And as it would be incompetent for the express company to make one rule to govern one individual and another rule to govern another individual, on the same basis likewise it would be unconstitutional for Congress to make that distinction.

Mr. THURSTON. That is it.

Mr. BIRDSALL. It goes rather to the right of the individual than to the right of the common carrier.

Mr. THURSTON. And my proposition illustrating that is that by rules and regulations of classification or directing the manner in which goods shall be carried and how they shall be boxed or protected or presented, and all rules and regulations of that sort, are only based upon the right of the common carrier to protect life and prop-

erty and to secure its own convenience in the matter of the transportation itself, and no such classification and no such regulation could be based upon conditions that exist outside with which the common carrier is not connected, and with which the transportation itself is not connected.

There being a prohibition community toward which a shipment of liquor was directed, that outside situation would not and could not justify the carrier in making a rule or in legislation compelling him to make a rule of a different kind with respect to one class of merchandise than he would as to another.

Mr. CLAYTON. May I not ask you there, do you not think Congress has already by the passage of the Wilson law singled out and put in a class by itself intoxicating liquors; do you not think that the decisions rendered under the Wilson law recognized the right of Congress to single out intoxicating liquors and put them in a distinct class by themselves and to prescribe separate regulations for the transportation of such merchandise?

Mr. THURSTON. No; I do not think it is to such an extent, I think the only extent of the decision of the Supreme Court is that Congress can make an article when it reaches a State subject to the laws of the State, and of course, when that article reaches the State it can make the common carrier from that point on in handling that shipment subject to the laws of that State.

Mr. CLAYTON. Has not Congress singled out and put in a class by itself the transportation of cattle so as to prevent the spread of pneumonia or the tick fever, for example?

Mr. THURSTON. Undoubtedly.

Mr. CLAYTON. It has singled out that article.

Mr. THURSTON. Unquestionably.

Mr. CLAYTON. Now then, is it not competent for Congress to single out and legislate in regard to intoxicating liquors?

Mr. THURSTON. I do not think so as far as the common carrier is concerned. In regard to the cattle, it is done because the cattle transportation—not the ultimate use of the cattle but the transportation itself—is dangerous to the public welfare, the public health, or rather to other cattle.

Now, if there was anything in these liquors that could blow up on the way, or could hurt anybody while they were being transported, or would affect the moral condition of a community while they were on the cars, Congress could make any kind of a regulation it pleased; but here you are trying to make a regulation as to transportation simply because when these liquors arrive at their ultimate destination they may, in the use individuals make of them, become dangerous to the public welfare, and I do not think that would be a ground that would justify that.

Mr. CLAYTON. No; I hardly think you state it fairly. The Hepburn-Dolliver bill, as reported at the last session of Congress, was intended to be a regulation of interstate commerce, and its constitutionality was based upon that and not with reference to any prohibition laws of any particular community. It was intended solely in furtherance of the power of Congress to regulate interstate commerce, and do you not think that Congress has a right to regulate the trans-

portation of intoxicating liquors as a class by themselves and to prescribe the rules under which they may be regulated in the transportation by the carrier?

Mr. THURSTON. In my judgment I do not believe it has. I am pointing this question out to you, not because of the fact that I stand here opposing legislation on that subject, but because, if legislation is to be enacted, my people want legislation that they can stand on; it is for their protection; it is not because we oppose anything. We only want you gentlemen to be very sure, and if you require that we shall make a different regulation with respect to these shipments, to other shipments, that you are putting us on safe constitutional grounds where we can stand; we do not want trouble and litigation following the law.

Mr. CLAYTON. You do not think Congress can require the express company, then, to collect in advance its charges for the shipment of intoxicating liquors from one State to another?

Mr. THURSTON. I doubt it seriously.

Mr. CLAYTON. You do not think that would be a regulation of commerce authorized by the Constitution?

Mr. THURSTON. I think it would be this. You have the basic foundation for your legislation; this is interstate transportation, and you can regulate it so long as your regulations do not discriminate as between shippers. You can not require that the one man shall require more than another for his shipment, and I do not think that there is any basis on which you can say that a box of dry goods, the transportation of which, the manufacturers of which, the sale of which, is legal in New York, can be sent by a carrier C. O. D., and prohibit a box containing liquors, which is at the point of shipment legal in its manufacture, and in its sale, and in its shipment, from being sent the same way.

Mr. HENRY. I think the South Carolina case throws great light on the proposition you made. In that case they declared the law unconstitutional because it discriminated against wines and liquors from other States, and in that case they held that it was a constitutional right that a man had to ship liquors or wines into South Carolina, from California or any other State, for his own use and consumption, but not for sale, and that that right could not be abridged by the State or Congress, and that South Carolina could not discriminate against this article of interstate commerce. I think that strengthens your position very greatly.

Mr. THURSTON. I think some of my people would be entirely willing to-day, perhaps more than willing, to put it in there voluntarily, but they do not believe they can, and they are very much afraid that Congress has no basis on which to enact that legislation.

Mr. HENRY. I do not believe it can myself.

Mr. THURSTON. Thank you, gentlemen, for your attention.

(Thereupon, at 12 o'clock, the committee took a recess until 2 o'clock p. m.)

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D. C., March 20, 1906.

The committee met this day at 11 o'clock a. m., Hon. John J. Jenkins in the chair.

The CHAIRMAN. The committee will come to order. Is there any gentleman present who desires to proceed with the argument this morning? I am very sorry we have had to delay these matters, but we have been waiting until we would have more members of the committee here.

Representative WEBBER. Is this the Littlefield bill this morning, Mr. Chairman?

The CHAIRMAN. It includes everything on the same subject—Mr. Williams' bill, and the Hepburn-Dolliver bill, and the Littlefield bill.

Mr. WEBBER. I would like to be heard a few moments on the Littlefield bill.

The CHAIRMAN. We would be glad to hear you now, Mr. Webber.

**STATEMENT OF HON. AMOS R. WEBBER, A REPRESENTATIVE
FROM OHIO.**

Mr. WEBBER. I do not presume to instruct this committee, made up largely, as it is, of lawyers of experience in the law, as to what the law is, nor do I presume to instruct you relative to the facts. But I do want to offer my influence, what little there may be of it, and my testimony in behalf of the measure.

The world is progressing. It should be, and no doubt is, light that we are after, and not heat. We should all be willing to listen one to the other, in the light of past and present events and surroundings, to see whether or not this legislation would be just under the principle of the greatest good to the greatest number.

Now, if I understand the Littlefield bill correctly, its object is to remove an evil which has grown out of the fact that there is no law against common carriers, carrying on interstate-commerce business, which prevents them from carrying into any State or Territory intoxicating liquors, and the State or Territory that has laws that are against the traffic finds itself crippled continually by these clandestine shipments that are made to private individuals.

Now. I take the position that we have long since passed the question whether liquor is an evil or not, whether the liquor traffic is evil or not. It is conceded by the people as a mass to be an evil, and has been adjudicated by the courts as such. I know out in Ohio I have gone carefully over the decisions several times, and I have found that all the legislation, drastic as it may have appeared on its face at the time, against the sale and the furnishing of intoxicants has been upheld by our Supreme Court, and always on the ground, ever on the ground, that it is an evil, and any legislation that will cripple the evil should be upheld under the constitution of the State.

Now, if this committee think that the shipping of intoxicants into the States and Territories in the manner that it is carried on is an evil to the Commonwealth, and that this provision, this Littlefield bill, will correct that evil, at least within a reasonable measure, why

should it not be enacted into law? Why should any State or Territory be crippled in its efforts to suppress an evil when the Congress of the United States, having control of interstate commerce, has the power to correct it?

If the liquor traffic were not an evil, if it were a legitimate business, if it were for the common weal of the country, I would be against this bill. But I am in favor of this bill, because that traffic is an evil, and this bill seeks to remedy it, and in my humble judgment it would remedy it.

The people in my State, I believe, four-fifths of the voters of Ohio, if they had the opportunity to express themselves on a provision of this character, would say, "Enact this into law," and I take it that Ohio is at least an average State in the Union as regards intelligence. It is getting to be one of the older States. It has in it eastern people, and it has in it those who gave people to the West.

I trust, gentlemen, and I know and believe you will give this measure that consideration that men of heart and judgment and conscience, men who are fearless desire to give to every piece of legislation that comes before this committee.

I thank you for your attention.

The CHAIRMAN. Mr. Boutell, do you desire to occupy any time now? Representative BOUTELL. Yes.

STATEMENT OF HON. HENRY S. BOUTELL, A REPRESENTATIVE FROM ILLINOIS.

Mr. BOUTELL. Mr. Chairman and gentlemen of the committee, I wish, in the first place, to thank the committee for their kindness and courtesy in giving me this opportunity to appear before them. I did not know until two weeks ago yesterday that the bills which you have under consideration were likely to be reported, and therefore, although opposed to these measures, I did not ask for an opportunity to be heard.

I remember one of our colleagues in a former Congress telling me that he carried on his campaign partly by a unique method, at least to me, of sending out our familiar gallery cards to all the registered voters in his district. I suggested to him that he might find that a little embarrassing. "No," he said, "it simply conveyed to them in a tangible form my willingness and pleasure to see them here," although he never expected that any great portion of his 40,000 voters would come here and sit in the gallery.

In the same way we all know, and we can speak very frankly about it among ourselves, that there are a great many measures introduced in the House—something over seventeen thousand have already been introduced in this session—which it is not designed should ever be acted upon. Those who introduced them express through these measures their approval of the objects sought to be attained. And so with these measures here. I did not suppose that any one of them would be considered or reported by this committee.

One of these bills, the bill introduced by Mr. Williams, is a bill that had previously been before the Ways and Means Committee.

Mr. PALMER. I hope you do not mean to infer that Brother Littlefield introduced his bill as a gallery play, do you?

Mr. BOUTELL. I did not refer specifically to his bill. But inasmuch as the gentleman from Pennsylvania asks the question, let me say I have in mind a bill introduced in two Congresses for the repayment of some sixty million dollars of a certain tax levied and collected and expended some forty or fifty years ago. I have no doubt the object to be attained by that measure is a popular object in the district represented by the gentleman who introduced that measure. It has never been reported and never argued, and I presume it never will be.

Mr. LITTLEFIELD. I will relieve the gentleman from any embarrassment, so far as the Littlefield bill is concerned. It was introduced in order that it should be reported, if it can be. I wish to see it enacted into law later, if it can be.

Mr. BOUTELL. I have no desire to speak on the constitutionality or unconstitutionality of any of these measures, and I have in mind House bill 13856, introduced by Mr. Williams, and House bill 3159, known as the "Hepburn bill," and House bill 13655, introduced by Mr. Littlefield, and House bill 16479, introduced by Mr. Brantley.

Now, gentlemen. I will not occupy your time in discussing the constitutionality or unconstitutionality of any one of these measures if they should be enacted into law, for various reasons. I know, in the first place, and I take it for granted, after this lapse of time and at the close of the hearings, that this question has already been discussed exhaustively, and there are no gentlemen in the House and in the country who are better able to pass upon the constitutionality of this bill than the members of this committee; and in the second place there is this further consideration, that when we attack a measure in the way of opposition on the ground of its unconstitutionality those who are advocating the measure by convincing themselves of its constitutionality thereby convince themselves of the wisdom of passing it; and so I will concede, in the little I have to say, for the purposes of argument, that these bills, if enacted into law, would pass the scrutiny of the Supreme Court.

I only wish to say this in passing, as the great Grotius said, that even while justice does not require us to spare the lives of those taken in war, it is often required by goodness and magnanimity and mercy; and so it is in our legislative body, that even where a bill is not unconstitutional, there are considerations of sound policy which should prevent its passage.

Neither will I enter, gentlemen, into any discussion of the liquor question, so called, or of the wisdom or unwisdom of prohibitive, or, as somebody has coined a new word, deprivative, legislation, in preventing intemperance. I would, however, simply say this in passing upon that question—and I do not know that I am justified in delaying even for that—that I have in my hand a copy of the *Staats-Zeitung*, a great morning paper published in Chicago, of March 13, in which the leading editorial is an editorial commendatory of the attitude of Miss Phoebe Cousins, the noble-minded and philanthropic woman, in being taken on a sick bed before the New York legislature to oppose a prohibition measure, so called, pending there, as not being in the direct interest of temperance.

Again, I find in the *Chicago Tribune* of March 18, under a London date line of March 17, a dispatch concerning the great activity in

London in the consideration of curing the evils of intemperance; and both in Great Britain and, more especially, in Germany and France and Switzerland they are approaching this subject in a much more scientific spirit than we are here. In this London dispatch there is given an account of the methods adopted by certain Episcopal and Wesleyan clergymen in turning the minds of their parishioners from drink, and in the arguments made by distinguished scientists along that same line the declaration is made that in curing the drink habit we must bear in mind the fact that Nature abhors a vacuum, and it is not merely by deprivative legislation that we cure the terrible evils of intemperance, but by substituting something else for it. Here is the dispatch:

[By cable to the Chicago Tribune.]

LONDON, March 17.

Dr. Emil Reich, who just now is giving a series of lectures at Claridge's Hotel on Plato's philosophy, appears to be in agreement in his views on drunkenness and its prevention with the Rev. Stanley Parker, Wesleyan pastor at Plumstead.

Doctor Parker has gone one better than the Rev. Dr. Samuel Thackeray, who has taken over the Fish and Eels Inn at Hoddleston with a view of reforming the drunkard. Doctor Parker has organized a brass band, which he marches through Plumstead in the evenings in an endeavor to induce half drunken people away from public houses to an impromptu sing-song in the townhall, and, what is more, he is succeeding.

Publicans laughed at first, but now are angry, and one night Doctor Parker was treated to a drenching with a bucket of beer, but that did not dampen the ardor of the little pastor. He doesn't try to preach to his audience in their half drunken state when he gets them together. He simply tells them to sing what they like.

VISIONS OF A MERRY NIGHT.

The result may be better imagined than described, but in the morning they have a distant impression of having spent a merry evening, and so they come again, and that is just Emil Reich's theory, too, for the prevention of drunkenness, for here is what he said in a lecture the other evening:

"Can you imagine that the signing of a bit of paper pledge will curb human passion? What do men drink for? Why do they drink so much, especially of the wretched stuff consumed by the ordinary drinker? I'll tell you. It is want of amusement. Between the amount of amusement given to a nation and the quantity of drink consumed by that nation there is a clear, almost fixed relation. France seldom drinks to drunkenness, but has plenty of amusement. When will these temperance and teetotal people learn that their efforts to suppress drink by methods they adopt are futile?

PRACTICAL FOES OF DRINK.

"The bicycle probably is the greatest foe of the drink traffic. It has accomplished infinitely more than all the talk of the teetotaler and far more sanely and beneficially. Open your theaters on Sunday to people, encourage cycling, the love of the theater, the love of amusement, and the occupation of temperance and teetotal orators is gone. Take away a glass of drink from a man and he'll get another. If he can't get that he will resort to opium."

Then, with a twinkle in his eye, the lecturer created laughter by adding, "Or, what's ten times worse, tea, because the passion is from within, and counteractives of a deprivative order will never do. They always have failed us. Government statistics show beyond cavil that the number of murderers among teetotalers is far greater than among even confirmed drunkards. Some people ascribe all crime to drink. I agree with them if you make that drink water."

Mr. LITTLEFIELD. I suppose, Brother Boutell, that that is in face of the fact that the German army, when it is called upon to show physical endurance, is absolutely deprived of anything that stimulates and intoxicates?

Mr. BOUTELL. Oh, yes.

Mr. PALMER. The point of Brother Boutell's argument is that the temperance people do not know what they are talking about, and that the other side know better what the temperance people want than they do themselves.

Mr. BOUTELL. That is one of those inferences, perhaps, that a man would draw who is looking only at one side of the picture. I said that I did not propose to discuss the question at all. I simply intend to allude to these facts in passing, as they were drawn to my attention this morning. I say, again, I do not propose to discuss or to be drawn into any argument as to the wisdom or unwisdom of prohibitive legislation intended to cure intemperance, and I say to my Brother Palmer that, for the purpose of argument as to the constitutionality of this law, I concede the wisdom of prohibitive or curative legislation in regard to temperance. But I do not propose to discuss it, and in the third place, I do not propose to discuss the effect of any of these bills in reenforcing State legislation. It is the very fact that they reenforce certain State legislation that is the basis of my opposition to them; as I will attempt to show later on.

But I simply wish to make two points, Mr. Chairman and gentlemen. Two weeks ago I received communications from societies in my district asking me to present, if possible, the attitude of the German-Americans toward legislation of this character, and it is a great pleasure to me to do that, in the first place, and secondly, I will give the ground of what I think is their serious opposition to bills of this character. In the first place, I want to relieve my German-American friends of the great amount of satire and ridicule that have often been heaped upon them for what is often denominated their irrational devotion to beer.

It is a subject of comment and ridicule on all occasions, and I want to explain, if I can, what that origin is, and what the basis of their opposition is, as a class, to legislation of the character of these bills now pending here.

First, I want to read a translation of an editorial which appeared in a recent number of the *Chicago Staats-Zeitung*, as showing the attitude of these people. It is entitled:

GERMAN-AMERICANS LOOK OUT!

While the production and sale of alcoholic beverages is denied in the so-called prohibition States, the individual citizen in these States thus far has not been deprived of the right to buy beer, wine, and ardent spirits in original packages from other States and from abroad. These shipments are protected by the interstate-commerce laws and are not placed under the jurisdiction of State and municipal authorities until the recipient of them is in actual possession.

For years the prohibitionists have endeavored to confine the right of living of those among their fellow-citizens whom they have forced into their yoke to rules of their own choice. At the present time they are attempting to force through Congress the so-called Hepburn-Dolliver bill, the purpose of which is to place under the jurisdiction of the willing authorities of the "dry" States and Territories all shipments of alcoholic beverages sent to addresses of such States or municipalities at the boundary line. True, we are assured that the law is not directed against private persons, but against dealers who import the beverages for the purpose of reselling them. But since the officials have no means of determining from the appearance of the original packages whether the beverages will land in the cellar of a private party or be resold to second and third customers, it is perfectly clear to all who are aware of the usual officiousness of those in charge, that a law like the proposed Hepburn-Dolliver measure will be a source of endless harassing and senseless red tape.

The bill should be killed by a sweeping majority, for it one of the most objectionable and most dangerous measures which have been introduced in the national legislature for years. It is a flat contradiction of the popular idea of constitutionally guaranteed rights and personal liberties to the citizen, it encroaches upon the jurisdiction of the States, and it disfranchises great municipalities which thus far have been successfully battling with prohibitive oppression. Besides all this the measure is a severe blow to the interstate jurisdiction of commerce, which is a prerogative of the Federal Government and should of necessity remain such.

However, the moral objections to the bill are even of more importance than the constitutional and legal considerations. This country suffers from an overproduction of laws; the condition thus brought about would be unbearable only for the fact that the common sense of the people treats with contempt and refuses to observe bad laws. The great German chancellor von Bismarck coined the phrase: "Bad laws are amended by a careless administration." It seems reasonable to extend the application of this expression thus: Bad laws produce a worse administration, destroy the people's sense of justice and rob it of its respect for the authorities.

It is the right and the duty of the Federal Government to interfere in the administration of the States whenever their republican form of government is endangered, when life and property of the citizens are threatened, or when the necessity of defense against a foreign foe arises. But the Federal Government has no right to meddle with the administration of the States for the purpose of subordinating the majority to the whims of the minority, which in this case would mean to set up the Prohibitionists as the ruling power. The Hepburn-Dolliver bill is the first attempt to use the Government as a tool to interfere with the established police forces of the States and municipalities.

It is to be hoped that all German-Americans will arise as a unit and ward off this blow, which is aimed at the foundation of our Constitution and our civil liberty. Prohibition has proved a failure wherever it has been instituted. Nowhere has it promoted the cause of true temperance, but it has always been the hotbed of narrow-mindedness and intolerance. The intended compulsory measure will not change this. No Congressman who votes for the Hepburn-Dolliver bill is therefore entitled to the indorsement of an honest German-American in the future.

Without going back over the paragraphs of that editorial, I want to call attention to those specific sentences which probably have dwelt in your minds, expressive of the feeling that this measure and similar measures infringe upon the personal liberty of the citizen.

Now, we know that the German-American element is very large in the United States at the present day. I think the statistics show that in our population to-day 35 per cent are of foreign parentage. In some of the cities of Massachusetts the percentage of foreign parentage has gone up to over 85 per cent. In Illinois about 51 per cent in the State are of foreign parentage, and in the city of Chicago about 77 per cent are of foreign parentage, and the majority of these are Germans.

I have lived among them all my life, and I know them; and I think I know the origin of their feeling as to legislation of this sort. In my district there are perhaps six large German churches; I know of two churches in which the schools below the eighth grade contain 1,800 children, all taught in the German language, and taught English as a classical language, and therefore they speak English a good deal better than some of our American children. Those are Catholic churches. Then there are large Lutheran churches, all loyal people and God-fearing citizens, but all reflecting the sentiments expressed in this editorial.

Why? The German, perhaps, who wrote that editorial, is Wilhelm Rapp. Herr Wilhelm Rapp, the editor of the concern, who was one of the notable forty-eighters, men who came to this country like Carl

Schurz and Pratorius and Brentano. They undertook to set up great freedom of speech and of religion in the Fatherland, and when they came to this country they seemed to revert to the old original Teutonic ideas of religious and civil government, which they possessed in common with our Puritan ancestors. They brought with them certain very estimable things for which we should thank them. They brought with them a joyousness of life and of out-of-door living, and they brought with them what I am glad to see has gone into almost all our schools—they brought into the church the choral singing and outdoor schools and picnics.

They brought with them their isothermal lines, and they have mingled with those of New York State and Massachusetts and the West and the Northwest particularly, and therefore when they brought with them their wives and children they joined with their wives and children in the songs and festivities to which they had been accustomed. They had their national beverage with them, and at that time no one ever accused the Germans of any especial devotion to beer. The devotion of the Germans to it simply came as a reply to the attempt to deprive them not only of their beer, but of those other things that I have mentioned—their choral singing, their sangerfests, their out-of-door festivities, their picnics.

If some of you are familiar with the local histories of some of those Northwestern States, you will find that where they settled these out-of-door Sunday picnics were attacked by the Sabbatarians. There was some narrow-minded and stringent local legislation forbidding the assembling of those people in their Sunday out-of-door afternoon picnics with their families, with their music, and their beer. Then there came along a strong response to that movement in the use of the native German language and the establishment of their own Lutheran and church schools. All of this was in consequence of an attack made upon the Germans.

Of course, I do not think it will have any prevailing influence with you gentlemen concerned in the enactment of this bill, but I take great pleasure in relieving the German people, in their almost universal opposition to this measure, of the accusation that they are devoted to alcoholic intoxicating beverages.

It would perhaps be a clumsy illustration to say that the opposition of the German to this deprivation of his beer would be just like the opposition of all of us Yankees if somebody conceived the idea that the codfish was provocative of thirst, and if some State or municipality forbade the sale and use of codfish, and bills were introduced here to deprive the codfish ball of its interstate-commerce privilege. [Laughter.] And I will venture to say that from Aroostook to San Diego, and clear down to Dry Tortugas, those who never ate a fishball in their lives would unite in opposition to that measure. [Laughter.]

Mr. PALMER. Do you draw any line of similarity between a codfish ball and a highball? [Laughter.]

Mr. BOUTELL. I do not know whether there is any distinction to be drawn between those or not; but, coming a little nearer to the New England home, I will take the subject of rum. My good friend, Mr. Littlefield, and my good friend, Mr. Tirrel—

Mr. LITTLEFIELD. Medford rum?

Mr. BOUTELL. Yes; they will know something of the rapture with which our Puritan ancestors regarded rum. [Laughter.] Strange

as it may seem, before the temperance revival of the early part of the nineteenth century—during the eighteenth and the early part of the nineteenth century—the universal New England beverage was rum. The first item that was discussed in the first tariff bill of 1789 was the subject of rum, and the first duty ever imposed by the United States Government was a duty proposed by a distinguished New England Member of the House for protection of the New England beverage of rum. As late as Senator Benton's time, he proposed a heavy duty on molasses, and when asked for an explanation, it was this: It was in protection, he said, of his rapidly degenerating colleagues and constituents in New England, because, from his own observation and scientific researches, he had discovered that a man could be drunk longer and get sober more quickly on corn whisky than on rum, and by the prohibitive duty on molasses he wanted to prevent the importation of rum. [Laughter.]

If any of you are at all curious, and if any of you have an anti-quarian spirit, as I have no doubt the New England members of this committee have, and have looked over the old church records, you will find that in the old orthodox churches the largest item of expenditure in the church raisings or in the ordination of a clergyman was the expenditure for rum; so that you will observe there was a time in the history of this country when rum was a New England beverage and New England statesmen were called upon to protect it, and no church function was considered complete without the use of this beverage.

Mr. LITTLEFIELD. All of which shows that "the world do move." [Laughter.]

Mr. BOUTELL. Yes; "the world do move," and among the best things, seriously speaking, that our Germans did in bringing in their happy out-of-door life and their choral singing was in replacing strong alcoholic spirits with beer.

Mr. GILLET. Do you mean to say that in Maine and some others of those New England States they have ceased using alcoholic spirits? [Laughter.]

Mr. BOUTELL. I would have to refer that question to those who are more familiar with the facts up there.

Mr. LITTLEFIELD. They do not raise churches on rum and depend on rum in the New England churches.

Mr. PALMER. They only raise hell on rum. [Laughter.]

Mr. BOUTELL. Another thing. We have passed upon all that narrow and nativistic and undemocratic attack upon our German-American friends, and if you will read the records of our social progress with an open mind you will concede that the Germans that came from the Fatherland and introduced choral singing and turners' societies and their beer have done as much as any one element for the cause of temperance; and those who were formerly the critics of the Sunday festivities of the Germans are now themselves breaking the austerities of the Calvinistic Sabbath with the lonely game of golf, and the automobile, and the bicycle; and the influence is good.

So much in explanation of the feeling of the German-American citizens upon this deprivative or prohibitive legislation, and the origin of their opposition to it.

Mr. LITTLEFIELD. Your point, as I understand it, Brother Boutell, in a word is, that it is racial and inherent, rather than sinister?

Mr. BOUTELL. Yes; and that beer has never been regarded by the Germans as an intoxicant, and that the manufacture or vending of beer, as almost all of you know from traveling in the old country, is high in the social scale. The point I wish to make is that they rise in opposition to measures of this sort for reasons altogether different from the advocacy of intoxicants, as I have often heard it sincerely said.

Mr. PALMER. The other inference I draw from your discourse is that you think the European Sunday is preferable to the American Sunday?

Mr. BOUTELL. I think a happy modification of the old Sabbath with which you and I were familiar in our boyhood—a happy modification with the outdoor life and song and music which came to us with the Germans and Huguenots—is preferable to the dull, dreary Sabbath of the early Puritans.

However, that is neither here nor there. The reason I think these bills should not receive favorable consideration from you is that, conceding their constitutionality and conceding the wisdom of prohibitive measures, these bills, as I understand it, however differing in detail, have for their object the removal of the interstate-commerce character and privileges from a certain class of commodities under certain conditions, some under one condition and some under others, according to the character of the bill, the object being that where a State prohibits the vending of alcoholic beverages the vendee of one State shall not purchase from the vendor in another State under the interstate commerce as set forth in the Constitution. In other words, these measures are a distinct invoking of Federal legislation for the purpose of carrying out State legislation.

Now, I know that one of the strongest arguments made in favor of these bills—and it is put in a very captivating way—is that these measures simply remove the shackles by which the Federal Government has impeded the action of State legislatures. That sounds very plausible, and it is very attractive, but it is not true. If the so-called shackles had been put upon State legislatures by the Federal legislation there might be some truth in it; but an article which is an article of commerce is, under the Constitution, an article of interstate commerce, and the decisions of the Supreme Court have shown how far the Constitution protects such property as against State legislation, and it is Federal legislation of this sort which is direct and positive in defining the character and privileges of interstate commerce.

Now my objection to this legislation is an objection which goes to all legislation of this character, no matter what the details may be: and I say, repeating again, putting aside the question of temperance and the altruistic social benefits to be derived from it, that this is not the way to do it. Why? Because each State has now vested in it plenary power to accomplish the object that is sought to be accomplished indirectly through these bills, and I object to these bills, as I always do to bills of this class, both in and out of the House, sometimes under very trying and urgent demands from sources that I would like to consider favorably, because these bills increase the present alarming tendency toward the augmentation of power in the Federal Government.

If we stop and think for a minute what are the three great evils at the present time that seem to impede the development of this country.

I think all thoughtful, social, and political philosophers would say at once that they are, first, the inefficiency of our present municipal governments, the deplorable inefficiency of the carrying out of the will of the people in our large cities; secondly, the abnormal and unwholesome influence of aggregated wealth, especially in preventing or deterring legislation; and third, the rapid increase in the power of the Federal Government.

Mr. LITTLEFIELD. Now, Brother Boutell, is not this specific legislation exempt from your criticism, because without referring now to Mr. Williams's bill, but taking the Hepburn-Dolliver bill and the bill introduced by myself, it is a distinct and absolute relinquishment of power by the Federal Government to the State.

Mr. BOUTELL. I thought I covered that in my previous thought. I attempted to do it. That, I say, is a very attractive way of putting it.

Mr. LITTLEFIELD. It is not certainly a reaching out for any further power on the part of the Federal Government, so that it would not be subject to the criticism you now make.

Mr. BOUTELL. It is subject to this criticism, that so far as the positive legislation of Congress is required to carry out the legislation of individual States, it is an assumption of power which our forefathers thought had better be left in the State legislature; and it is quite well for us at this time—because there are a number of other bills of this same nature that I want to allude to, as showing how we are working along these lines—it is quite wise for us to refer to some of the expressions of the founders of our Government. It has been an astounding thing to me that bills of this nature could meet the approval of one who believed in the historical doctrines of the Democratic party, and this bill and bills of a similar character are bills which would startle, if they could return to these earthly scenes, even such strong Federalists as Alexander Hamilton or Fisher Ames or William Richardson Davie, of North Carolina.

Let me read a sentence from Mr. Davie in the North Carolina Convention:

The confidence of the people, acquired by a wise and virtuous conduct, is the only influence the members of the Federal Government can ever have.

I think that would quite astonish a United States Senator at the present time.

As showing this concentration and increase of power in the Federal Government, let me call your attention to some almost forgotten instances. Prior to 1860 the States reserved to themselves the right to direct the conduct of United States Senators, and when some resolutions were discussed in the papers some time ago—resolutions of a State legislature in reference to the resignation of a United States Senator—they were commented upon as something entirely new and strange and peculiar; and yet if we look back over the history of our country we shall find that this method of instructing Senators by State legislatures prior to 1860 was very common, and that men of high character, when so instructed and could not comply with the instruction, would resign.

There were a great many resignations of this character growing out of the troubles with Andrew Jackson, the Executive, in the thirties, and perhaps the most conspicuous example was that of a man who

later became President, John Tyler, who resigned because he could not comply with the instructions of the State legislature.

Now, I think the matter is reversed, and the State legislatures are apt to follow the advice—not to put a stronger term in its place—of a United States Senator. [Laughter.]

Another thing has been almost forgotten. Down as late as the fifties resignations from the United States Senate were very common to accept most any other office in the gift of the people. I have here perhaps fifteen or twenty illustrations of United States Senators who resigned to seek the nomination of governor in their respective States, and one of those—and the gentleman from Mississippi [Mr. Williams] will probably recall it especially as a striking illustration—was the case where both Senators Foote and Jefferson Davis resigned at the same time to make a canvass for the governorship of Mississippi.

And perhaps the most striking illustration of all is the case of Nathaniel P. Tallmadge, of New York, who in 1844 resigned his position as Senator from the Empire State to accept the position of governor of the Territory of Wisconsin. I do not know anything that could more strongly illustrate the strengthening of the power of the Senate, without a single alteration or modification of the law, than to imagine one of the present Senators resigning to take the governorship of New Mexico or Alaska.

Mr. LITTLEFIELD. Perhaps after Mr. Phillips gets through with his articles there may be more or less of them inclined to resign.

Mr. BOUTELL. But not to take the governorship of a Territory.

Mr. LITTLEFIELD. I don't know what they would not take in preference to the job they now hold.

Mr. BOUTELL. I simply cite this in passing as one of the illustrations of the strengthening of the power of the Federal Government. This strengthening has been peculiarly striking in the case of the Executive, and in the case of the Senate, and has resulted in demanding in some fifteen or sixteen States the election of Senators by the people. And, singularly enough, the majority of the States that have by their legislatures or by national conventions indorsed the election of Senators by the people have been the solid Democratic States where the legislatures formerly exercised this power of recall, and where in the old days a Senator would resign if he could even have a chance of running for the office of governor of his State.

Now, along with this strengthening of the power and influence of the Federal Government we see this, that very often where a State law seems to be ineffective an appeal is made to Congress for the purpose of reenforcing the State authorities in carrying out that law. Federalist by birth and instinct as I am, I look upon all this tendency of strengthening the different branches of the Federal Government as one of the most alarming signs of our time, because the strengthening of the Federal Government goes, *pari passu*, hand in hand with a corresponding loss in the vigor and stability of our State governments. I recollect in the subcommittee of the Ways and Means Committee in a hearing on one of these bills, or bills involving a similar principle, a gentleman from one of the Southern prohibition States used this very frank language. He was asked if they did not have prohibition laws in the State, and he replied they did.

The power to protect the people of the various States in health, in morals, and general welfare is inherent in the States—was reserved to the States by the Constitution, was not delegated to the Congress of the United States, and remains there to be exercised by the States at the will and pleasure of the legislatures of such States.

I could not put into better form the idea that I have in my mind with reference to all these bills.

Mr. LITTLEFIELD. As I understand it, you take Mr. Bartlett's argument, and the conclusion that follows therefrom?

Mr. BOUTELL. I do not know what his conclusions are in reference to these particular measures; I have not had time to go through them, but his general views on the subject are excellent.

Mr. LITTLEFIELD. The conclusion which follows from his argument is a bill almost identical with the bill pending before the committee.

Mr. HENRY. Here it is.

Mr. BOUTELL. I will have to take the gentleman's statement, which I have no doubt is entirely correct, but I should say that it was an absolute non sequitur.

I have taken already more time than I intended for these two points. Just one further illustration of the bill of my friend Mr. Williams. I must say I have full sympathy with the object to be obtained; but that bill goes farther in a way than any of the others, because it refers not only to States, as I recollect it, but to prohibitive legislation in counties and municipalities; and, as showing that this legislation may not end here, I have right near me at home a community of which you have heard, called Zion City, an incorporated municipality under the laws of the State of Illinois, situated at the northeast corner of Chicago, and presided over by John Alexander Dowie.

Mr. LITTLEFIELD. Elijah the Second.

Mr. BOUTELL. Elijah, as he calls himself. Those people are making an effort for a clean and an upright life. We might not concede that all their views are correct, but I have been through their municipality, I have talked with some of their people, and have been familiar with their community ever since the start. I can not but admire their self-control, their self-sacrifice, their abstemious and rigorous life, and their industry. All those are commendable. Now, among other things, they not only prohibit the sale of alcoholic liquors but they prohibit the sale of tobacco in any form; they prohibit the sale of drugs in any form, and no practicing physician is allowed within the borders. They prohibit the sale of oysters, and they prohibit the sale of pork flesh.

Of course there are in that community a great many people who do not belong to the religious community proper, do not give their adherence to those views, but if the contention of the gentleman from Mississippi in his C. O. D. bill is correct as regards alcoholic beverages being sent into a community that has prohibited their sale, why is it not correct as regards any other commodities that that community may desire to exclude? In other words, as Stanley Jevons would reduce this bill logically to mathematical terms, this bill says that commodity A plus the conditions X, Y, Z, one or all of them, shall be deprived of the privileges and character of interstate commerce. Why not the commodity B plus the conditions X or Y or Z; why not the commodity C?

Certainly nothing in the theory of constitutionality. And so it would be a mere matter of evidence, a mere matter of influence, nothing in principle, to secure the enactment of such legislation as would prevent the sending of packages in the ordinary course of business by express containing medicines into Zion City from Racine or pork meat from Kenosha.

Mr. DEARMOND. Has your attention been drawn to bill 16479, introduced by Mr. Brantley?

Mr. BOUTELL. Yes; I have that here. And so, without wearying you any further, or attempting to go into the technical legal features of this bill, and simply summing up with this statement, conceding prohibitive measures in States or municipalities forward the cause of temperance, and conceding that those measures are constitutional, and admitting, what we must admit, that this measure reenforces State prohibitive laws, I think the overwhelming objections to it are that it does what in every State a plenary power can do by healthy, vigorous exercise of the powers which were originally lodged in it.

And that this legislation is an assumption by positive national legislation of powers which should be left to the States. Every one of these powers taken from the States weakens the health and vigor of the States, which, as one of the great fathers said, must forever be the pillars of the fabric of our Union or else the Union itself will become disintegrated.

I thank you, Mr. Chairman and gentlemen, for your attention.

STATEMENT OF HON. JOHN SHARP WILLIAMS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI.

Mr. WILLIAMS. Mr. Chairman, I came around this morning with the idea of being a listener and not a talker. Some things said by the gentleman from Illinois will force me to force myself upon the committee once more.

I think most of you will agree that my friend from Illinois has illustrated the gallery-god story very well. His district contains 70 per cent of people of foreign birth who are very much opposed to this sort of legislation. The reply to all he has had to say upon that subject is that the legislation does not affect the people of his district at all; it does not in the slightest degree interfere with the rights of local self-government.

All that the bill introduced by me—and the other bills, for that matter—propose to do is to reenforce local self-government in the various parts of the country by removing the shackles that Congress has placed by inactivity, by pacivity, and nonaction in the exercise of the authority conferred on Congress by the Constitution of the United States. And in doing that it does not affect his people in the slightest degree.

Now, if my friend from Illinois will excuse me, he is always interesting and always instructive, but I have never known him, to use an adjective coined by an old friend of mine at home, to be quite so “inaproporous” as he has been this morning. He has waived the discussion of the constitutionality of the several bills, and he has given us a dissertation upon Senators and the duty they have to

resign when called upon by the State legislatures, and a great many other things of a most interesting, historical character.

I understood, Mr. Chairman, that Senator Thurston in making an argument before your committee took the position that you could not single out a special article and pass a law concerning it like the law which is proposed in my bill. The answer to that is this: That Congress has already done that, the courts have already pronounced the acts constitutional, and if, as I apprehend, he based his objection on the fourteenth amendment, which guarantees the equal protection of the laws to all citizens, it is only necessary to call your attention to the fact that that is an inhibition upon the States and not upon the Federal Government.

Now, my friend says that I introduced this same bill before the Ways and Means Committee. Of course he does not intend to do me any injustice—

Mr. BOUTELL. I merely referred to this as showing that we had heard these arguments. I did not, of course, mean to do my friend any injustice.

Mr. WILLIAMS. It was not the same bill, and my reason for introducing this bill here was that my friend and other members of the Ways and Means Committee objected that that was the wrong committee, and that I ought not to attempt to bring it as an amendment to that section of the Dingley bill, as it was only really an expression of a legal proposition and only indirectly a revenue measure, if at all, and I myself took that view of it later on and introduced this bill, which was referred by the Speaker, and not by me, to this committee.

Now, Mr. Chairman, among the things that are selected and forbidden to be carried, a lottery ticket, obscene literature, instruments for improper use in preventing child bearing, and besides that the Wilson bill itself singles out this particular commodity. In the Committee on Ways and Means my bill was postponed by the action of my friend, among others, until action should be taken by this committee on the bill introduced here. That bill was a bill providing that with these other things forbidden now to be carried by express companies or otherwise liquor C. O. D. should be included.

I then introduced the bill declaring that wherever a common carrier, an instrumentality of interstate commerce, subject to the regulatory power of Congress, should carry liquor C. O. D., or in any other such manner as that anything was left to be done by the carrier as agent of the seller to complete the sale, thereby making the carrier a party to the sale, that should be a misdemeanor and contravention of the interstate-commerce act and should be punished by a certain penalty prescribed in the bill—nothing in the bill but a regulation of interstate commerce.

Now, Mr. Chairman, it is difficult to follow these arguments along just as they come, but my friend said something about intermeddling with the administration of the States, the administration of affairs in the States. There are two ways of doing that—one is by an active law of Congress and the other is by Congress failing to exercise a power vested in it by the Constitution, and that failure itself furnishing an impediment to the due execution of the laws which everybody admits the State has a right to pass.

The gentleman says that our forefathers followed along that line of not intermeddling with the States. I will undertake to say that our forefathers thought that this very power was left in the State—everybody thought it almost until the Supreme Court gave judgment in the original-package case, and so universal was that thought that the pressure came upon Congress immediately to cure the effects of that decision, which Congress undertook to do in the Wilson bill.

One of the reasons why State prestige and State authority have been weakened so much is because of this very overstraining of the Federal interstate-commerce authority to beat down State laws. My friend talks about the States having plenary power in regard to the cure of these very evils that I desire to see cured by the passage of a bill like the one I have introduced. Surely my friend has not read the case of the express company against the State of Iowa, which I read to this committee and which shows so fully that the State has not the power, that the only source from which the power comes to protect just what is complained of is the Federal Congress itself. The decision could not be more clear if the court had tried to pass upon that very point.

Now, Mr. Chairman, the gentleman then illustrates this by making an argument *reductio ad absurdum*. He goes on to say that Connecticut might pass a law to make it unlawful to sell in Connecticut any cigars not wrapped with Connecticut wrappers. The gentleman from Texas very properly interrogated him then as to whether he thought that law would be constitutional, and my friend from Illinois very conveniently declined to discuss the constitutionality of either his proposed *reductio ad absurdum* or the bills now pending before the committee. I want to be perfectly candid as far as I can be—no man is ever perfectly so where he has a side to contend for, because he is more or less warped by his position—but even if that sort of law were constitutional, and it would not be, because this inhibition is upon the States, I want to confess this:

Thomas Jefferson confessed it long before me, and it is true. That the most dangerous power vested in the Federal Government, so far as the reserved rights of the States are concerned, is the interstate and foreign commerce power of the Constitution. It is almost plenary. It was held so fully plenary in regard to foreign commerce that even the father of democracy himself put an embargo upon all foreign commerce and came very near raising a cessation among our New England friends. The very clause which gives the right to regulate foreign commerce gives the right to regulate interstate commerce. How far that power may go heaven only knows, until the judges get through construing it and Congress gets through passing laws.

It is the most dangerous power in the Constitution and as far as I can see there is but one check upon it, and that is the common sense of the national legislators. Great Britain has managed to live in a state of comparative liberty for I don't know how many centuries, trusting to nothing but the common sense of her national legislators. Many of our States have nothing to shackle the State legislators—Connecticut, for example—except the common sense and patriotism of the legislators themselves. Whenever somebody comes before Congress warning us to pass a law to help the growers of cigar wrappers in Connecticut by prohibiting the sale of cigars in Con-

necticut unless they are wrapped with Connecticut wrappers, or to help the Zion Church keep out medicine from the district where the Zion Church rules, I imagine the bill will not have much standing before any Congress now in existence or that ever will be in existence, because there will be no moral behind it, there will be no real evil, there will be a palpable abuse of State authority even if the constitutionality of such measures were granted—and no lawyer would contend for a moment that they would be constitutional.

But when you appeal to Congress upon a matter of this sort we have to attempt to show that the real evil did exist, that the remedy could not be exercised by the State, that the remedy could be exercised only by the Congress of the United States, and that it was a remedy which ought to be exercised, as well as a remedy which Congress had the power to exercise, and it seems to me that that is all there is in it. Mr. Chairman, I thank you.

Mr. PALMER. Senator Thurston made an objection to your bill, that it would not be right to penalize an express company for carrying packages that they would not have any right to examine or know anything about the contents of before they took.

Mr. WILLIAMS. I do not conceive that there is anything in my bill that could punish an express company that carried whisky without knowing it was whisky, and if there is the committee can amend that. Undoubtedly nobody would punish anybody for doing something they did not know they were doing.

Mr. LITTLEFIELD. Has your bill got the element of knowledge in it?

Mr. HENRY. It does not use the word "knowingly," does it?

Mr. WILLIAMS. It says, "shall carry liquor." If a man were to ship whisky in some way so that the express company could not know what it was it would be absolutely unjust to punish the express company for doing that, of course, and I should not object to any amendment to make that plain, if you do not think that is plain as the bill now reads.

Mr. PALMER. The fact is it is always shipped so that nobody can tell what it is.

Mr. WILLIAMS. No; I beg your pardon. It is shipped in a jug marked with the liquor dealer's name on it, and so that the express company can know what it is. Besides that, however, an express company generally inquires what is in a package offered for delivery, and if it is deceived by lies then the company could not be held. As a matter of fact the express company does take the trouble to inquire as to what the goods are that it receives for shipment, and knows it is shipping whisky when whisky is given to it for shipment. I do not want any bill brought out of here that will punish as a crime anything done in ignorance, of course.

Mr. TIRRELL. Would it not be easier to require a label upon a package stating it was liquor?

Mr. WILLIAMS. Yes, that might be. As a matter of fact, that cut no figure in the abuse I am aiming at, because the express company does know. You can put in the word knowingly if you want to, but they know what they are carrying; they are carrying it with full knowledge of what they are doing, so much so that one of the great express companies that operates throughout the South has refused, as they say, to participate in a nefarious traffic.

Mr. LITTLEFIELD. In any event, you are willing that the word "knowledge" should be inserted?

Mr. WILLIAMS. Yes.

Mr. SMITH, of Kentucky. You are willing for "knowingly" to be inserted?

Mr. WILLIAMS. Yes; anything you choose along that line. I do not want to punish a man or a corporation either that has not offended.

(Thereupon, at 12.30, the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

TUESDAY, March 20, 1906.

The committee met pursuant to the taking of recess.

STATEMENT OF HON. ASLE J. GRONNA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH DAKOTA.

Mr. GRONNA. Mr. Chairman and gentlemen, I simply want to say a few words in regard to the Littlefield bill, in which we are very much interested in the State of North Dakota. We have, as perhaps you all know, constitutional prohibition in our State. We have no trouble in enforcing the laws so far as our State laws are concerned, but our great trouble is with what we call C. O. D. packages. We find that these eastern people, or the liquor people, ship in a great deal of stuff to the station agents. They ship it by numbers; they do not ship it in to any particular persons, but simply ship it in and mark it by numbers.

They seem to have an arrangement with the station agent, and the latter generally has a certain room for this liquor in his station. Arrests have been made; we have had several cases before the courts; but, of course, you know how helpless we are, because we run up against the interstate commerce clause. Our people are very much interested in this subject. We have had State prohibition now for several years, and the sentiment is growing in our State; we are more and more in favor of it, and if we could only have a law such as the Littlefield bill I think we would be able to do away with the sale of intoxicating liquors in our State entirely.

Mr. BRANTLEY. Do you think that liquor shipped in from other States to any particular person not a bona-fide shipment, but sold actually after it arrives to some person to whom it was not shipped, is protected by the interstate commerce clause of the Constitution?

Mr. GRONNA. I do not know that it is protected, Mr. Brantley, but we can not prove that it is not shipped to some particular person. For instance, I go into the depot and I see the agent, and I will say "Is there a package for me?" And he will say "Your number is 365, is it not?" "Yes; that is my number." Now, it is impossible for me to prove that that liquor is not shipped to me personally.

Mr. BRANTLEY. Did you ever make a test case of it?

Mr. GRONNA. Yes.

Mr. BRANTLEY. And failed to convict for the want of proof?

Mr. GRONNA. Yes; it has always failed. We have made several tests. Of course, I am not here to argue the moral side of it, because

there are others that can do that better than I can; I am simply here to tell you from a business standpoint that I believe prohibition is one of the greatest blessings a State can have. I believe if I had Rockefeller's money I would start in to try to eradicate the American saloon, and that I would do more good with my money in that way than I could do in any other way. The Red River of the North divides the State of Minnesota from North Dakota. There is the town of Grand Forks on one side of the river and East Grand Forks on the other side.

East Grand Forks has 30 or 40 saloons, and they pay \$1,000 apiece a year. That city is bonded to the limit; they have no paved streets; the city does not look prosperous. But you go right across the river to our prohibition State, and in Grand Forks you will find our merchants are prosperous, and we have paved streets, and everything looks nice and clean, and our bonds are at a premium. That same thing is true of Moorhead and Fargo, two towns across the river from each other—one in Minnesota and the other in North Dakota. So it is certainly not in the interest of revenue to have licensed saloons. As a rule you find that the farmers who live around the cities—nearest to the cities—have their farms mortgaged, and that the farmers a little way off from the towns haven't any mortgages on their farms.

In the State of North Dakota you will find all the farmers prosperous. There are no mortgage sales for the reason that they stay at home; they stay at home and attend to their farms and their business. Another thing, our young boys are not confronted with the open saloon. Instead of going to the saloon and billiard hall on Sunday they go to church and Sunday school. But as I said, I am not here to urge the moral side of it, because there are parties here better able to do that than I am; but we are deeply interested in the measure, and I speak for from 40,000 to 50,000 voters in my State; and I know I voice their sentiments when I say that if the Littlefield bill is passed we will get the relief we want.

Voicing the sentiment of 50,000 voters and 300,000 people in our State, I ask that you will pass some such bill as this for our relief.

I thank you very much, gentlemen, for the attention you have given me.

STATEMENT OF HON. WILLIAM H. STAFFORD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN.

MR. STAFFORD. Mr. Chairman and gentlemen of the committee, I never heard until within the last minute that drinking was the cause of poorly paved streets or of the foreclosure of farm mortgages. I had to wait to be enlightened by the distinguished Representative from North Dakota; and while I am not so well acquainted with conditions in North Dakota as I am in my own State, still I must say that on passing through his State two years ago I saw many men, as a result of the State prohibitory law, carrying with them flasks of whisky, obtained from so-called blind tigers, and becoming drunk, which conditions do not prevail so generally where liquor selling is not attempted to be suppressed but is regulated stringently under the license system. A necessary sequence to attempted prohibition is

the sale of heavy spirituous liquors, and usually the very worst, under no regulations, and the exclusion of the much milder and temperate drinks, such as beer, porter, and the like.

No one has shown that the Wilson Act is not sufficient to enable the States to enforce their own police regulations. To the query put by Mr. Brantley to Mr. Gronna, whether they had any difficulty in enforcing their State laws, the answer was made that they had had difficulty owing to the absence or lack of proof. I contend that in any community where there is sufficient public sentiment to enforce prohibition laws they can be enforced, but without the requisite public opinion those laws are evaded and are difficult of enforcement. I have listened quite intently to some of the arguments that have been made during these hearings, but I have yet to find any person showing that the States are without authority to regulate the sale of liquor when sent into the States in original packages.

I contend that the State has authority under the Wilson Act to forbid any express agent from transferring original packages by means of C. O. D. delivery to any person other than the recognized consignee, and if a State would enact a law making it a misdemeanor for any agent of any railroad or express company to transfer liquor shipped into a State from another State to any other person than the original consignee, I hold that such a law would be upheld. There can be no question of the adequateness of the authority in the States under the Wilson Act to prevent the practices complained of, provided public opinion is strong enough, as is requisite for the enforcement of all penal statutes, to make it effectual.

It would be futile for me to attempt to add anything as to the views entertained by the German-Americans toward this class of restrictive legislation to that so well expressed by Mr. Boutell here this morning. I know the attitude of the Germans toward these measures, and I know that they regard them as an invasion of their personal rights. My purpose here this afternoon is, if the committee will bear with me, to make some suggestions on the constitutionality of these measures. It may be considered apocryphal, or somewhat presumptuous, for me to make the argument that some of the measures under consideration, if not all of them, are in violation of the Constitution.

The gentleman from Maine the other day stated that there could have been no question as to the intent of Congress, when it passed the Wilson Act, as to the meaning of the word "arrival." Although at first blush, when I first considered that enactment some years ago, I was more or less inclined to believe that the Congress intended to vest in the States the complete jurisdiction over liquor shipments as soon as they crossed the border, still, in reading closely the decisions in constructions of that act, I am inclined to believe to-day, if not fully confirmed in the belief, that the construction of the word "arrival" given by the Supreme Court was proper and necessary to sustain the constitutionality of that act. In considering the cases that have construed that enactment, namely, *Rhodes v. Iowa* (170 U. S., 415); *In re Rahrer* (140 U. S., 545); *American Express Company v. Iowa* (196 U. S., 142), and *Pabst Brewing Company v. Crenshaw* (198 U. S., 17), I come to the conclusion that the Supreme

Court considered Congress without authority to vest its exclusive legislative powers in the States.

You can not delegate, as I take it, authority that is now vested completely and absolutely in the Congress in the State legislatures, as is sought in such enactments as the so-called Hepburn-Dolliver bill and the Littlefield bill.

There was only one purpose involved and only one object to be attained when the Wilson act was passed, and that was to prevent the sale of liquor in original packages, which arose as the result of the decision in the case of *Leisy v. Hardin*. In the cases I have just mentioned and those of *Bowman v. Chicago and Northwestern Railroad Company* (125 U. S., 465), *Leisy v. Hardin* (135 U. S., 100), and *Vance v. Vandercook* (170 U. S., 438), will be found the law that bears upon the construction of the Wilson act, and the scope of the powers of Congress to enact such legislation.

I think that this committee, viewing this subject from the broad standpoint that it deserves, instead of attempting to extend the powers of the Wilson Act, should, in view of the conditions that were presented in the recent case of the *Pabst Brewing Company v. Crenshaw*, referred to before, seek to limit the Wilson Act so as to prevent an abuse that was never intended by the framers of the Constitution to be perpetrated by the States so far as interstate commerce was concerned. No wonder that the justices that joined in the minority opinion—Justice Brown, Justice Brewer, Chief Justice Fuller, and Justice Day—entered such a vigorous protest against the act of Missouri in that case under construction, where that State attempted, by reason of their authority under inspection laws, to levy a tax on an article of interstate commerce which was considered in that enactment to be an article of commerce.

Mr. PARKER. Where is that reported?

Mr. STAFFORD. It is reported in 198 U. S., page 17. In that case, as perhaps you already may know, the State of Missouri levied a tax under the guise of its inspection laws upon all beer that was produced in the State and all beer that would be imported into it. As far as it related to the beer produced in the State there could be no question but what it was a valid enactment, and that its object was for the purpose of inspection, but as the minority opinion pointed out clearly, as far as the covered inspection of imported beer was concerned in requiring an affidavit to be furnished by the manufacturer of beer made outside the State, it was merely a subterfuge in order to tax the outside product to the advantage of the local product.

I do not believe that the framers of the Constitution intended that an article of interstate commerce, in being transported from one State to the other, should be subjected to the discrimination that the beer in that case was subjected to—to the disadvantage of the outside producers and to the advantage of the local producer. Without the Wilson Act, which was construed as vesting the right to pass such inspection laws as to intoxicating liquors upon their arrival in the State, this State legislation would not have been upheld by the majority justices in that case.

It was suggested this morning by Mr. Boutell that if this legislation is enacted it would authorize the State of Connecticut to give a preferential advantage to the cigars that were made with Connecticut wrappers.

Mr. Boutell did not see fit to take up that argument, and I do not attempt now to answer that which he declined to answer, but as it was in the line of the argument I intended to present to this committee, I wish to say that if Congress would extend the designated articles in the Wilson Act to include cigars, the use of which the States under their police powers as relating to the public health can regulate, and then the State of Connecticut would enact a measure similar to that which the State of Missouri enacted in the case which was passed upon—the case of the Pabst Brewing Company *v.* Crenshaw—that it would give the manufacturer of cigars in Connecticut a decided advantage over the manufacturers without the State. It must be admitted that it was never intended to hamper the passage of the commodities which were recognized as articles of commerce in their transportation from State to State, and in the Missouri statute, construed in the case of Pabst Brewing Company *v.* Crenshaw, beer was considered an article of commerce, and not contraband.

Under the phraseology of the bills that are now before this committee, if they are passed and upheld as being constitutional, under the construction given to the law passed by the State of Missouri in the exercise of its police regulations, any State would have the right to give a preferential advantage to the products of its own State so far as the articles designated in this bill are concerned. One of them I may mention is alcohol. A State could readily, under the guise of the act being an inspection law, so far as alcohol was concerned, whether it would be used as a beverage or whether it would be used in the arts, give an advantage to the producers of alcohol in any State, to the disadvantage of the producers of alcohol in any adjoining State; and that is one potent reason why I ask and believe that this committee should go slowly in conferring such a broad authority upon the State in the regulation of these matters.

It seems that the only complaint that is made that is sought to be corrected is in this abuse that is being followed, whereby certain express-company agents, under the cover of C. O. D. packages, sell the article rather than consign it to a specially designated consignee. I wish to say that if any State would enact a law which would provide that whenever any liquor, on its arrival in a State, is delivered by an agent or employee of a railroad or express company to any other person than the consignee named and specified in the shipment that he shall be deemed guilty of a misdemeanor, that that law would be constitutional within the Wilson act, and that all that would devolve upon the prosecuting officer to enforce such a law would be to obtain the necessary proof. If the States to-day have ample power under the Wilson Act to enact this legislation, to forbid this practice, why should Congress go to the extent of conferring the power that is attempted by these measures to the States in the regulation of interstate commerce, which was never intended by the framers of the Constitution, and which is of such doubtful constitutionality?

Take the Hepburn-Dolliver bill or the Littlefield bill. What is intended by those measures? Congress delegates that power, which is comprehensive and complete in the Congress, to the States to pass such legislation as the State legislature enacts over interstate com-

merce so far as alcoholic liquors are concerned. If Congress can delegate its authority over one subject it can delegate its authority over any number of subjects. But as I understand the Constitution and understand these cases that have construed the law, the opinion has been expressed vigorously that the delegation of power by Congress to the States is unconstitutional, and that the authority over interstate and foreign commerce is exclusive in Congress for its own exercise.

Taking up the report that was submitted on the bill that was favorably reported by this committee last year, we find that Mr. Clayton, who prepared the report, did not seek or attempt—and I suppose all who agreed with him in the report did not seek or attempt—to prevent an individual in a State having prohibition laws who desired liquor for his own use from ordering it without the State and having it delivered to him, but if these measures are passed that I have referred to and if they are held to be constitutional it will vest in the States absolute power to forbid any individual from ordering for his own consumption any of these articles from without the States, and thereby infringing upon that which a large number of citizens believe to be their personal right and privilege.

Mr. PALMER. Would you be satisfied with the bill with an amendment on it as it was reported last year?

Mr. STAFFORD. I believe, in view of the decision in *Pabst Brewing Company v. Crenshaw*, and viewing this question from the broad standpoint of national expediency, that such legislation should be checked at the present time, and that the authority under this Wilson Act should be limited rather than broadened. From my viewpoint I could not approve of that bill with such an amendment, because it would give the manufacturers in one State an advantage over those in another State, and such legislation tends to check the freedom of commerce between States.

What the decisions of our Supreme Court hold, after considering the conflicting opinions and trying to abstract some rule that harmonizes all, I contend, is that Congress has the power to define when the interstate feature of commerce transported between States comes to an end, and to authorize the legislatures to assume jurisdiction over such commerce after said determined time, but Congress is without authority to arbitrarily and without regard to fact terminate the interstate feature before the transit in fact is completed, and that it can not delegate any authority to legislate over such commerce, either through the exercise of the State's police powers or its powers of taxation, before the termination of the interstate transit. To hold the contrary, as designed by these measures that seek to vest control in the States over interstate commerce as soon as the commodities cross the border, would be a delegation of legislative power, which, in effect, would amount to an amendment to the Constitution.

With these observations I leave the matter, hoping that the committee will consider the effect of the latest decision by the Supreme Court in *Pabst Brewing Company v. Crenshaw* (198 U. S., 17), and the extent to which like enactments can be carried to the great detriment of exporters into States where the commodities are recognized as articles of commerce.

STATEMENT OF HON. ANDREW J. BARCHFELD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA.

Mr. BARCHFELD. Mr. Chairman and gentlemen of the committee, I desire to speak in opposition to the Hepburn-Dolliver bill as a Representative in Congress and on behalf of the National German-American Alliance of the United States, the Germans and the descendants of Germans in the United States, who number 12,000,000 souls. The Germans are a liberty-loving, independent, economical, patriotic people, and above all things abhor anything that savors of hypocrisy or deceit. The Germans favor the use of beer and wine as a beverage and food, abhor the use of strong drinks, particularly whisky.

The use of beer as a beverage and food is advocated by leading physicians in all large cities where they have not a perfect filtration system and where the mortality from typhoid fever and kindred diseases is alarming. In my own city of Pittsburg, our mortality from typhoid fever is one-half that of the Greater New York with twelve times the population, and equal to that of Chicago with six times the population. One gentleman appearing before your honored committee two weeks ago said there should be a law enacted requiring all prohibitionists to drink water for a period of five years. He thought that that might be a cure for some of this prohibition legislation. I do know that if they were compelled to drink the water supplied by the city of my birth that it would successfully end all prohibition agitation and all prohibitionists, as they would surely die, as thousands upon thousands of other innocent people have been compelled to pay the penalty for drinking this impure water.

I would say the matter, however, has aroused a proper public sentiment, and Pittsburg is now engaged in constructing a \$7,000,000 filtration plant. When a man drinks beer he is at least getting boiled and filtered water, something the average wage-earner can not afford to buy at the present high rate of living. This bill is clearly unconstitutional, as it interferes with the interstate-commerce clause of the Constitution. I am satisfied that it would complicate our Government in its application of international law and usages. It is absolutely un-American, as the average American believes in fair play, and this measure is advocated and championed by a few honest but misguided individuals who insist upon the powerful aid of the Federal Government being brought into play to assist them in doing what they themselves have been unable to do (in their prohibition States), namely, make prohibition prohibit.

I will submit this proposition to this committee of men learned in the law, if they can conceive or ever heard of such legislation being offered in the halls of legislation of any republic on earth—surely, not in any monarchy—and has no place here. If a bill such as this were offered in the French Chamber of Deputies, the German Reichstag, or the British House of Parliament it would promptly and speedily be consigned to the waste basket, where it belongs and where it should be. We pride ourselves on the fact that we are a liberty-loving people, but this piece of legislation is anything but the embodiment of that sentiment. The trouble with our country and its free institutions is that we have too much legislation now that is affecting the personal liberty

of the people now living in this supposed free land of ours. Do you want to further restrain us? This bill, if passed, is but the stepping stone to other and more dangerous legislation affecting the personal liberties of our people.

In this enlightened twentieth century, when every man should call his fellow-man brother, be he black or white, Jew or Gentile, Greek or Mohammedan, Christian or infidel, native born or naturalized; when religious, racial, or national differences should no longer exist; when every man should respect the rights of his fellow-man so long as he does not interfere with the rights or liberty of others, legislation such as this has no place in the statutes of the most progressive nation under the sun, which offers an asylum to the oppressed and down-trodden of all other nations who mean well, who think well of our form of government, and who come to our shores for the purpose of establishing a home here and taking up citizenship in the most favored nation on earth. But if we were to tell them that this boasted liberty of ours consists in denying to them the right to purchase and to obtain for his own use a bottle of beer or a bottle of wine, you deny to him something he never dreamed of in his fatherland, and can not bring himself to think that our boasted liberty is anything more than a mere sham.

We are living in a most prosperous and progressive age, when new ideas, new thoughts, and new sentiments are hourly being championed, all to make the world better and brighter than we have existed. But this seventeenth century intolerance has no resting place at the dawn of the most progressive century in the world's history. Thousands upon thousands of people are employed in the hundreds of avenues of agriculture, mining, manufacturing, shipping, and commercial life in the manufacture of these beverages, who are part and parcel of the body politic, who would be ruthlessly thrust aside if these few misguided but honest advocates of prohibition were to have unlimited sway in this beautiful and prosperous land of ours. The millions upon millions invested, the countless millions that this traffic pays into the Federal Treasury, making it possible for us to maintain the most progressive Government under the sun, would be unceremoniously and ignominiously ruined if these misguided people could have their way.

Prohibition never invested a dollar save in temperance societies, where they congregate and raise revenue to keep a propaganda at work, annoying our President, members of his cabinet, Members of Congress, and Senators, threatening them unless they stand by their rabid, nonsensical, and un-American legislation, that they will have dire vengeance meted out to them by turning their whole batteries of temperance union workers against them. Dozens of members of Congress have told me, much as they are opposed to this measure, if the bill comes up on the floor of the House they will be constrained to vote for it for fear of the wrath of the very element I have just mentioned. This is unfair, un-American, and cowardly. Our Government recognizes the traffic, encourages its manufacture and sale, and why should these interests which contribute so much to our national greatness and so much to our national revenues, not forgetting the happiness that is brought to the thousands of homes by the moderate and temperate use of these beverages, constantly be

harassed by a propaganda who never contributed one dollar to the support of the Federal Treasury, and never furnished employment to a single producer of wealth in our nation?

Herbert Casson, in *Munsey's Magazine*, on the Germans in America, says the United States has given to its 12,000,000 Germans the right to shape the course of their own lives, to speak their minds, and own their homes in peace. In return the Germans have become an inseparable part of this country, adding more than any ten can tell to its strength and prosperity. In fact, what Charles Sumner said forty years ago is doubly true to-day:

"We can not forget the fatherland," he said, "which, out of its abundance, has given to our Republic so many good heads, so many strong arms, with so much of virtue and intelligence, rejoicing in freedom and calling no man master."

We have in my city the oldest and largest German church congregation, with a total abstainer as its pastor, an example of tolerance and true personal liberty which the other side may well emulate, and which speaks louder than words that all we ask is to be permitted to live our lives and pursue happiness in whatever manner we individually please so long as we do not trample the same right inherent in our fellow-man.

Mr. Chairman and gentlemen of the committee, I thank you personally for this most respectful hearing, and I ask you to vote down this bill.

STATEMENT OF HON. WILLIAM A. CALDERHEAD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS.

MR. CALDERHEAD. Mr. Chairman, it is a good while since I have listened to anything of the kind we have just heard. I have heard it before, but not for a good while. It is a curiosity to me to know that I had typhoid fever once because I didn't have beer to drink; and there are a good many things I might say concerning that remarkable address; but I think I hardly have time for that.

The fact is I did not know the Hepburn-Dolliver bill or any other bill except the Littlefield bill was under consideration just now. I supposed it was a measure which was intended to take away from the liquor traffic by express companies the protection of the interstate-commerce clause.

We have had prohibition in Kansas for a good many years and I had something to do with it myself. I was not a prohibitionist personally, but I was a prosecuting officer long enough to know the operation of the law and long enough to enforce it in a community where there were as many Germans as there were of any other nationality. We finally came to the place where the only man who could sell liquors in my community was the express agent. He received packages by express from Missouri or from some other State, and then when the men to whom they were consigned did not call for them he would sell them to anybody else who was willing to pay the freight and the charges accompanying the bill, and I convicted him of selling liquor in violation of law and sent him to jail for it. There were some counts upon which he was convicted at the time of which he was finally acquitted, for the reason that he had delivered the goods to actual consignees

and he was protected by this interstate-commerce clause to the extent of those goods only.

Just a word concerning prohibition in Kansas. There are forty-five counties in Kansas that have no inmate of a poorhouse and no inmate of a jail. There are some counties in Kansas where the prohibitory law is violated. Popular sentiment is largely against the law. The class of men who congregate around large machine shops and smelting mills and who congregate in cities from 10,000 to 40,000 inhabitants find ways at one time or another to violate the law.

In any city where there are enough of votes to make it a serious matter for the candidate for sheriff and constable there is more or less violation of the law, but as a rule the law is obeyed in a majority of the counties in the State. As a rule in the majority of the counties in the State the law is enforced. I think there are not more than 15 counties in the State out of 105 counties altogether where the law is not regularly enforced, and the only violation of the law that is safe is this violation which seems to be prevented by this Littlefield bill.

The CHAIRMAN. Would the passage of what you call the "Littlefield bill" prohibit the sale of liquor in your State, such as you have spoken of?

Mr. CALDERHEAD. I am not sure of it, for I only had my attention called to this a few minutes ago.

The CHAIRMAN. Would the passage of that bill or any other bill that is pending, Brother Calderhead, overcome the strong sentiment you say exists in these communities in favor of selling liquor?

Mr. CALDERHEAD. Well, I am not sure that it would do that, and it is not a question exactly of whether it ought to do that. The question of public sentiment in the community depends on the moral standards of the community and of those who undertake the care of the morals and the culture of the community, the preachers and the public school teachers, and the family circles, and so forth. Where more families teach their children that the law is unconstitutional and an infringement of liberty and of personal rights than there are other families, the probability is that the law will be violated there; but if this bill passes, evidently the violator will not be able to shield himself under the protection of the United States interstate-commerce clause in selling goods promiscuously from the express office. I do not believe that any express company ought to be permitted to carry goods into Kansas and deliver them to an agent by numbers, and allow the express agent to let any man have them who will come and sign that number and pay the cost.

Mr. DE ARMOND. Do you suppose that is legal in your State now, or in any State where they have a prohibition law?

Mr. CALDERHEAD. I do not think it is myself, and I would undertake to convict any man myself, but there are a good many good lawyers there who do not think it is possible to convict at present.

Mr. DE ARMOND. I do not believe that they have any proper defense at all.

Mr. PARKER. I visited Fort Riley and Fort Leavenworth not so very long ago. I had been told that Leavenworth and Junction City were wide-open towns. I wanted to know whether it was correct. I was told that their way of doing was to leave to the tax assessor the right to see that prosecutions were brought against the fellows that broke the law that he chose to select, and he fixed the penalty that each was

to pay, and those prosecutions were not public; their names were never given out; that they were allowed to pay in this amount of money simply as a sort of tax, and the whole thing was therefore left to the tax assessor and the justice, possibly, before whom he brought these suits and got the plea of guilty.

Mr. CALDERHEAD. No; the tax assessor in the State has nothing to do with it, but this condition exists at Junction City and at Leavenworth. Understand that these two places are old important military posts that usually have from 1,200 to 2,500 soldiers at each of the posts. In Leavenworth the opposition to the prohibition law has always been strong on the part of the entire population. Leavenworth is on the Missouri River, and the State of Missouri is just across the river. The people who were in favor of the law and its enforcement were very much in the minority; they were never numerous enough to elect officers in behalf of enforcing the law, either marshals or constables, or justices of the peace, or judges of the district courts, or city councilmen.

The city of Leavenworth is governed by a city council, and Junction City is governed in the same way. In order that they may permit the sale of liquor and derive some revenue from it, the city agrees that once every month certain saloon keepers who are named by the city marshal and the city council may come in and pay a fine into the police court of, say, \$100 or \$200. I think it is \$200 at Leavenworth and \$100 at Junction City. They have to pay the costs of the prosecution and \$25 to the district attorney, and fees to the city marshal and the fees to the police judge. They pay those, and pay \$100 or \$200 a month.

The CHAIRMAN. And that is done in opposition to a constitutional provision.

Mr. CALDERHEAD. Yes, sir.

Mr. PARKER. Is it true that their names do not go on the records?

Mr. CALDERHEAD. No, their names do not go on record in Leavenworth. Their names do go on record in Junction City, in this way, that the police judge makes a record of the names. It is the State of Kansas against whoever the man is, charged with violating the prohibition law, and he pleads guilty.

Mr. PARKER. How do they keep their names off in Leavenworth?

Mr. CALDERHEAD. I don't know.

Mr. PARKER. I was told it was entirely in the hands of some officer; whether it was the marshal or tax assessor I don't know.

Mr. CALDERHEAD. The city marshal and the police judge keep the record of the fines.

Mr. LITTLEFIELD. That scheme would simply be compounding felony, and all engaged in that would be liable to prosecution and conviction. The only remedy for that sort of thing is to educate public sentiment to elect better men to office.

Mr. SMITH, of Kentucky. Why could they not be brought before the grand jury? Do you have a grand jury?

Mr. CALDERHEAD. No; no grand jury has been called in Leavenworth County in my time, and I have lived in the State thirty-five years. Understand clearly now, that Leavenworth violates the law. Her population, probably two-thirds of it, is in favor of violating the law, and they elect district judges, and police judges, and city marshals, and city councilmen with that end in view, and with the idea that the law will be violated, and no man can be elected to any civil

office in Leavenworth who proposes to enforce the prohibitory law; and if anybody else undertakes it he fights against the public sentiment of a large part of the community, and usually it is disastrous.

Mr. SMITH. How a large a town is it?

Mr. CALDERHEAD. Leavenworth has about 17,000.

Mr. PARKER. Would the evil be met if the bill simply provided that C. O. D. deliveries should be subject to State law?

Mr. CALDERHEAD. I would have to think a little about that. I think this bill of Mr. Littlefield's comes pretty nearly covering it.

Mr. PARKER. It covers a great deal more. It covers cases where liquors are brought in and stored and then exported, and I don't know whether that was intended, because in such case the liquors are not going to be used in the States.

Mr. CALDERHEAD. I wanted to call your attention to another thing. Don't forget this fact now. There is Leavenworth and Kansas City, Kans., and Guyandotte and Junction City, at which there is Fort Riley, and there is Wichita, all those places where the law has never been observed or obeyed, practically; there are altogether about 15 such places as that in 105 counties in Kansas.

Mr. DE ARMOND. Fort Scott and Pittsburg and Galena?

Mr. CALDERHEAD. Yes.

Mr. PARKER. I got away from that—

Mr. CALDERHEAD. Don't get away from the fact that there are 8,000 miles of railway in Kansas with a station every 8 or 10 miles at which liquors can be delivered by the express companies, and if the man to whom they are consigned does not call for it any other man who wants them can come in and sign his name by so and so and pay the bill and take the liquors out, and that is the thing we want to prohibit.

Mr. PARKER. Well, would not the putting of C. O. D. deliveries under the control of the State meet that difficulty?

Mr. CALDERHEAD. That might affect other business. If it was applied only to intoxicating liquors it would be all right.

Mr. SMITH, of Kentucky. Have you read the Williams bill?

Mr. CALDERHEAD. No; I have not looked at any of the bills except this one, because it was the only one I was advised would be under consideration.

Mr. BRANTLEY. The second section of Mr. Littlefield's bill making the place of delivery the place of sale in C. O. D. shipments, under that, with prohibition in your State, if a man in New York should ship liquor C. O. D. to Kansas he would be a criminal under the Kansas law, would he not?

Mr. CALDERHEAD. I would not like to undertake at once to construe that section. I looked at it and it struck me as rather remarkable. The fellow that ought to be convicted, though, is the express agent who undertakes to do that.

Mr. BRANTLEY. But the man who made the sale in New York, the law reading that the place of delivery shall be the place of sale, under this will make the sale in Kansas, and though he had never been in Kansas he would be criminally liable in Kansas.

Mr. CALDERHEAD. I do not think he would be prosecuted unless he came to Kansas, but his goods would be confiscated and the liquors could not be delivered for the subject of a beverage. If he did not

come under the jurisdiction of the Kansas courts I do not think any effort would be made to prosecute him.

Mr. STERLING. Would those communities be any better off with any of these bills?

Mr. CALDERHEAD. I do not know that they would, because, as I say, the public sentiment has to be educated there. But the other 1,300 stations in the State, in little agricultural communities, who desire this protection, who are entitled to it, would be better off; there could not be 1,300 express offices, each a constant saloon; and they are the communities that I am especially talking about. Some day when public sentiment is strong enough, some day when the moral forces are strong enough in the State, we will enforce the prohibitory law in Leavenworth and Wichita and all other cities that now violate it. That is a question we will have to take care of ourselves, and that you can not take care of for us. All we ask is for you to take off the protecting hand of the interstate-commerce clause from the express agent who deals out liquors and knows that he is violating the law in doing it.

Mr. PARKER. I understood you to say that you prosecuted the express agents, and wherever they delivered liquor to other persons than the original consignees you were able to convict them?

Mr. CALDERHEAD. Yes; there is no question about that.

Mr. PARKER. It has always been my view that it was a sale.

Mr. CALDERHEAD. It was a sale, and I convicted them; that is all; but it is quite a while now—more than twelve years—since I attempted the prosecution of any of those cases, and I have almost forgotten what the Wilson law provides.

Mr. SMITH, of Kentucky. If that is the status of the law at present in Kansas, and I apprehend that is entirely correct, what more do you think ought to be done? If express agents who deliver packages to these people to whom they are not consigned can be convicted, what else do you want?

Mr. CALDERHEAD. I want this clause taken off, so that they can not deliver them to the parties to whom they are consigned, for that amounts practically to a sale at that place for a beverage in violation of the law of the State.

Mr. SMITH. Your purpose, then, is to prohibit any citizen of Kansas from shipping a package of liquor in for his own personal consumption if he wants to?

Mr. CALDERHEAD. Not quite that; the thing I want to do is to prohibit the express agent from selling to a man who comes in to buy; I don't know of any law that could be enacted that would prohibit me from buying liquors in New York and shipping them to myself and having them consigned to me; I don't think any such law ought to be passed.

The CHAIRMAN. You are talking in opposition to this bill then, for that is what these gentlemen have said this bill would do; they have said it repeatedly.

Mr. CALDERHEAD. Not quite—

Mr. SMITH, of Kentucky. I understood you to say that where the express agent delivered liquor to a person to whom it was not consigned you could convict him now?

Mr. CALDERHEAD. Yes.

Mr. SMITH. You do not want to convict them for delivering it to persons to whom the liquor is consigned, do you?

Mr. STERLING. That is for personal use?

Mr. SMITH. Well, for any use?

Mr. CALDERHEAD. That is not quite it. If I bought in Pittsburg or Philadelphia liquors for my own personal use and had them consigned to me I don't know why any law should prohibit that, but if liquors are shipped to the express agent in my town and he sells them to me I don't know why he should be protected.

Mr. SMITH. But I understood you to say that you could convict them now?

Mr. CALDERHEAD. I understand so, but the conviction fails there in the State.

Mr. SMITH. But is not the failure due to the sentiment there?

Mr. CALDERHEAD. No, not quite. Most of the convictions have been set aside for the reason that the agent was protected in some way or other in under this interstate-commerce clause.

Mr. PARKER. Now, Mr. Calderhead, let me ask you this further question. If a law were passed prohibiting these C. O. D. shipments would not that cover the case?

Mr. CALDERHEAD. I am not sure that it would cover it but it would go a long ways in assisting the securing of obedience to the law there.

Mr. SMITH. I wanted to ask you how much we would gain in a moral way. Supposing Congress could and did prohibit the transportation of liquors out into one of these towns that you have mentioned. Now, what would hinder these men from going across the river and into another county and buying; in other words, what is to be gained by this legislation if you are openly selling it there and fining them for it in violation of the Constitution what is to be gained by the legislation?

Mr. CALDERHEAD. Leave the question of those fifteen or eighteen places that are in the State where public sentiment is in favor of violating the law aside, I speak of the large number of counties and large number of small towns and communities where we would gain.

Mr. SMITH. But supposing Congress did exclude liquor from those 115 counties that you are speaking of and no man living in one of those counties could get liquor from Kentucky or any other State; I say what is to hinder him from going into these 15 towns and buying; in other words, what is to be gained by the legislation?

Mr. CALDERHEAD. Distance and carfare and a lot of other things would hinder him from going into those towns. I have not been in Leavenworth myself but twice in twenty years, and I am not a hundred miles away.

Mr. SMITH. But Leavenworth could ship it to him?

Mr. CALDERHEAD. The State law will take care of that part of it.

Mr. STERLING. They would have to prosecute them in Leavenworth where there is that popular sentiment against the enforcement of the law.

Mr. CALDERHEAD. Not quite; if the delivery was made at the station and the money received for it there the sale would be there.

Mr. SMITH. But suppose it was made at Leavenworth?

Mr. CALDERHEAD. Well, suppose it is; why should you go on protecting it as far as you can; why should you? We will do the best

we can with our end of it. Why should you go on and protect it with your end?

The CHAIRMAN. If I understand you correctly, you said you do not know of any law that could be passed that would prevent a man sending for liquor for his own use, and you do not think that such a law should be passed, and yet, as I said when Mr. Littlefield was out—and so he did not hear it—you are speaking against the bill, because the gentlemen here the other day said that is what they wanted, the very thing you say you would not be in favor of.

Mr. CALDERHEAD. I am not responsible for anyone else's opinion; I am only stating my own.

Mr. PALMER. I have not heard anybody before who said he was not opposed to the personal privilege. Everybody but Mr. Calderhead seems to think the bill we reported last year was a bad bill; the brewers and distillers don't want that and the temperance people don't want it.

Mr. CALDERHEAD. I did not see it, and I am not discussing that.

Mr. PALMER. That is the one that had the personal-privilege clause in it, to enable a man to secure liquor for his own use. Nobody seems to be in favor of that.

Mr. CALDERHEAD. I think anybody in the United States has the right to buy any commodity any place, except where the State jurisdiction prohibits it, and in this case I don't know any reason why Congress should go on assisting the men who desire to violate the law. I would like to examine this second clause a little further before I say how much I would add to it. I think the section in some way or other ought to limit it to the carrying and sale of intoxicating liquors. I would not like very well to have that section apply to the purchase of a suit of clothes in Chicago.

Mr. LITTLEFIELD. It could not do any harm where you were doing a legitimate business.

Mr. CALDERHEAD. I have said much more than I intended to when I came in, and I thank you for the opportunity.

STATEMENT OF HON. WILLIAM A. REEDER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS.

Mr. REEDER. Mr. Chairman and gentlemen, I was rather amused when the gentleman from Pittsburg was talking in regard to the Germans and their descendants. I am a German, descended from a German family, and was born in Pennsylvania. When I heard his sentiments I was glad that it was my good fortune to have been moved away from Pennsylvania early in my history. I have resided in Kansas for over a third of a century.

A great injustice is being done to the rural population of Kansas. We have a saloon in every town, kept there contrary to local law, and that saloon is run in this way:

A man comes in from Missouri, or some other State, sent by some liquor house, who makes out a fictitious list of names, and he has a hundred jugs of whisky sent in by express to those names. Then the boys of that town, if they can be educated up to it, will go to the express office, pay the sight draft, take the whisky and get drunk. The Government of the United States thus has a saloon established in

every town in Kansas, against the will of our people as expressed in their State constitution and laws, and I belong to that class of Germans who believe that when the people of a community or State determine they will enact a certain law that the Government should not step in and assist in disobeying that law. I am no lawyer, but I know that this committee can frame a bill, if they so desire, and can pass it through Congress, that will put these beverages under the ban of the law of the State when they come within that State.

Personally I do not wish to put myself in a position, nor I do not wish the State to, that will prevent any citizen of that State who desires to ship any beverage into the State for their own use, and I believe if you should pass a law the effect of which would be, as some of you have said, to deprive the individual of this right, that there would be no law passed by the State that would prevent a man from sending for liquors for his personal use.

Mr. STERLING. Why don't you prosecute them under your State law then?

Mr. REEDER. I do not understand whether that law can be enforced or not. I see Mr. Calderhead thinks it could be at one time, but I can say that it is not enforced, and we have a pretty fair set of lawyers in Kansas. A good lawyer gave up the task a week or two ago in Topeka after trying it for some time. He is in favor of prohibition and in favor of enforcing the law, but he found that it was simply impossible. I believe every one of you will agree we have a right to make a law and have it obeyed, and that the least the United States could and should do would be not to give aid in having it disobeyed. I believe I have seen a hundred jugs in an express office addressed to names of parties that never existed, and any boy can go there and get it by simply paying for it.

Mr. SMITH. Are they sent C. O. D.?

Mr. REEDER. Yes; but to fictitious persons. Some men utterly irresponsible, probably not capable of getting any other job, and men who are, if you will excuse the expression, certainly a very measly looking set of fellows, are sent out to sell this whisky.

The CHAIRMAN. You say those men come from Missouri?

Mr. REEDER. A good many come from Missouri, because it is the nearest State where intoxicants can be had legally.

Mr. LITTLEFIELD. That is the nearest place to come from?

Mr. REEDER. Yes, sir. I am quite sure of these intoxicants come from St. Louis or from farther east; I am not acquainted with the source of supply.

Mr. SMITH. I have no doubt you will find some Kentuckians there.

Mr. DE ARMOND. Do your lawyers and judges believe they can not prosecute these men successfully under the present law?

Mr. REEDER. Yes, sir.

Mr. DE ARMOND. This committee believes unanimously, I think, that they are all wrong; that if these parties who are violating the law were properly prosecuted by attorneys who knew the law and before judges who would do their duty and before honest juries, that convictions could be obtained; I do not believe there is any question about that. Everyone of those sales is a sale right there and nowhere else.

Mr. REEDER. I am saying that we do not control these sales. Why do these men come here now and try to prevent having this kind of a law passed? It is because they fear we will control it and carry out

the law. We do not control it now. You say, What effect would it have upon these fifteen places that Mr. Calderhead spoke of? Probably no particular effect, but it will have an effect upon forty-nine out of every fifty settlements in Kansas; forty-nine out of every fifty communities are suffering on account of the nonpassage of this bill, and you know it can do no harm to pass it—unless it does harm to this illegal traffic in whisky—and if that is true why not pass it?

I am no lawyer, but the members of this committee can formulate a law that will relieve us of this difficulty, and it is a deplorable difficulty to all citizens of Kansas who desire to have the laws enforced.

Mr. BRANTLEY. Do you think we ought to pass a law that if it did no harm to anything else would do violence to the Constitution?

Mr. REEDER. No, sir; I do not think you need to pass any such law. In my judgment you can pass a law that would remedy this difficulty and not do any violence to the Constitution.

Mr. PARKER. I asked Mr. Calderhead whether a law that would put C. O. D. deliveries under State control would not meet all difficulties. What is your opinion about that?

Mr. REEDER. I can not say; I am not a lawyer. I think I would be a poor judicial adviser to the Judiciary Committee of the House, but still I insist that you gentlemen can formulate a law that will meet the difficulty and come within the Constitution.

Mr. PARKER. You can tell me this. The only difficulty is with C. O. D. deliveries, is it not?

Mr. SMITH. You are stating your grievances. I think, of course, the committee can formulate a law that will reach that condition of affairs; I have no doubt about that.

Mr. REEDER. In 49 out of 50 cases this law will remedy the condition, and our lawyers think they can not remedy it by a State law. I hope you will frame a law that will permit us to carry out our own prohibition laws in Kansas. Simply permit the Government to get out of the whisky business in Kansas.

Mr. BRANTLEY. You do not appear here in favor of any particular bill?

Mr. REEDER. No, sir.

Mr. BRANTLEY. What you want is a remedy?

Mr. REEDER. Yes. I do believe you ought to permit a bill of this kind to come before the House and be voted on. The gentleman from Wisconsin spoke about public sentiment compelling men to vote on certain things. I believe that public sentiment should be worked up just as high as it can be in favor of everything that is right, because public sentiment does control us, it controls me; I do not see why it should not, and I do not see why any set of people should not formulate public opinion in any direction.

Mr. PALMER. You mean in the direction you think is right?

Mr. REEDER. Yes, sir.

Mr. PALMER. But if a set of people go to work to formulate public opinion in a way you think is wrong, how then?

Mr. REEDER. I do not believe people differ very much as to this prohibition question in Kansas as to what is right.

Mr. SMITH. Yes; they are differing very widely on this proposition.

Mr. REEDER. I will tell you public opinion in some things is made up by the interest of the people the men represent.

Mr. PALMER. Altogether.

Mr. REEDER. If I had several large breweries in my district the chances are I would not be here, if I had the same opinion I have now; I know I would not. They are not sending men to Congress from Kansas that do not believe in prohibition. We have a community where a sentiment against the sale of intoxicants is strongly intrenched. That sentiment seems prevalent in the South also, but my judgment is they have developed as good a set of laws on the subject as we have. Our law is all right, if the United States will only permit us to carry it out.

Mr. De ARMOND. I presume that as a matter of fact these anti-liquor laws are enforced better in the South than anywhere else in the States. Take Georgia, take Texas; you will find their laws enforced.

Mr. REEDER. That may be; I only get information from Columbia, S. C., where I looked the matter over personally. I thought they were making a failure of their law at the time I was there, but I realize there is a wonderful good sentiment on the temperance question in the South, and I suspect in many places it is well enforced, and I am glad of it. I believe if we can make this nation a temperate nation we have made a great stride toward perpetuating it.

Mr. TIRRELL. Do they have open saloons in Leavenworth?

Mr. REEDER. Yes.

Mr. TIRRELL. Then there will be no necessity of C. O. D. shipments there.

Mr. REEDER. No, sir; it is wonderful how they can disobey the Constitution and the laws there, but they do. In the rural districts the laws are quite generally obeyed. I thank the committee for this opportunity to speak to you on a subject of great importance in my judgment.

STATEMENT OF HON. JUSTIN D. BOWERSOCK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS.

Mr. BOWERSOCK. Mr. Chairman and gentlemen, I shall not detain you long. I want to speak only of my town and more particularly of my interest in some such bill as is proposed. I can not speak to you as a lawyer, but I think I do know something about conditions in Kansas and about the question of temperance. My town is one of from twelve to fifteen thousand inhabitants, the location of the State university, and also of the Government Indian school. At the latter there are from 600 to 800 young Indian boys and girls, a school supported by the people of the United States. We make appropriations here annually for that Indian school. For more than twenty-five years there has not been an open saloon in this town of Lawrence, which is 40 miles west of the Missouri River, west of Kansas City.

There have been "joints" there, and there is more or less drinking. What I believe can be largely prevented by some such legislation as is proposed is this condition particularly: Young students club together, raise a certain amount of money, telegraph or telephone to Kansas City, Mo., for beer or liquor to be sent to Lawrence C. O. D., and when it comes there they take it from the express office with the usual results. I think you fully with myself are interested in preventing the sale or the use of liquor by these young people of our State, some 1,500 students in the university, and 700 or 800 Indians

at Haskell Institute, because these Indians get "off the reservation" at times and are taken back to school under the influence of liquor.

It is a too common thing in my town, more particularly late in the week, Friday or Saturday night, for these young men to carry this liquor from the express office to their rooms or to their clubs and have their carousal. We have "joints," so called, in Lawrence—that is, a place where men in violation of the law can get liquor in this way through the express company C. O. D. packages, and secretly, it may be, dispose of it to parties who will go to them for the purpose of purchasing it—parties usually in whom they have confidence, whom they will believe will not expose them to the law.

The officers in my town are endeavoring to enforce prohibition, and except along the lines I have indicated they succeed. I believe there are young men going to school in Lawrence, perhaps hundreds of them, who have never seen an open saloon in the State of Kansas. Many of them go outside of the State, of course, and see places where liquor is sold, and it has seemed to me—it does seem to me—that some such legislation as is proposed will help the people in my State to better enforce temperance there than is possible under conditions as they exist at this time.

Mr. SMITH of Kentucky. The chief trouble is in the C. O. D. business; that is the source of the great trouble there, is it not?

Mr. BOWERSOCK. As a rule these young men or older men would not go to Kansas City, buy liquor and pay for it, and take it or have it sent to Lawrence. They can readily get supplied C. O. D., and do; not only the young men, of course, but others. And the evil in my town may be greater because we have young men from all parts of the State, and hence the greater need of a safeguard.

Mr. DINWIDDIE. I want to introduce Dr. Howard H. Russell, an attorney at law, chairman of our national headquarters committee. Mr. Russell is from New York.

STATEMENT OF DR. HOWARD H. RUSSELL.

Mr. RUSSELL. Mr. Chairman and gentlemen, our legislative superintendent of our antisaloon league is to present the legal argument in closing our case before you, and so I will not take time upon that point. What I wish to urge especially is with reference to the general proposition, and with reference also to the objection which we have among the officers of our antisaloon league and our workers throughout the country to the introduction of any amendment to the Littlefield bill as it is now pending before the committee. I suppose that all understand that in the States we have come to a point now where the principle of local option in dealing with the liquor question is a generally accepted principle on the part of the people of the whole country, both from the standpoint of citizenship and also from the standpoint of the courts.

There are thirty-eight States in the Union where local option in some form is provided for; there are sixteen States in which they can vote by counties whether they will have saloons among them or not; in the rest of the States, either by municipality or by wards or by resident districts, the people can deal with this question and settle it for themselves as to whether they will have liquor selling as a beverage

among them or not, and the courts universally hold this method of dealing with the question is a proper one.

If, as Mr. Dinwiddie will show, it is perfectly constitutional for the Congress of the United States to strengthen the provisions of what we have known in the past as the Wilson law, so as to withdraw the oversight of this business which is now impliedly and directly held by the United States in connection with the interstate commerce law, so as to relegate to the States the whole question of dealing with the liquor traffic, then we insist in our hearing before you that the United States ought to do for each individual State in the Union what the individual States are now doing for the counties and the various localities in the States, namely, giving the States local option in dealing with this liquor question, which will be the result, as we anticipate, of the report and passage of the Littlefield bill as it is pending before you.

The operation of such a law is not going, perhaps, to directly help to better enforce law in such communities as Leavenworth, Kansas City, Kans.; Rutland, Vt.; or Brattleboro, Vt., but it is going to have this result: In States where local option has been adopted it will enable them to go forward in the enforcement of law unhampered by the handicap that has been on the States through the interstate-commerce clause of the Constitution. Now, take it up in Vermont. When the question was up there some three or four years ago as to the repeal of the State prohibition law, one great argument used by those in favor of repealing the law and substituting local option—the great argument was that liquor was being sent there from New York State into the various communities in Vermont, and that the result was being accomplished of the sale and use of liquor through the interstate privileges accorded to the brewers and liquor dealers of New York State, and that the prohibition law was thereby rendered nugatory. And so they insisted that it ought to be abolished, since they would have liquor anyhow under the interstate-commerce provisions.

Referring to that feature of it, which applies to all these municipalities of these different States, we insist that the United States should withdraw this oversight of the liquor question which is implied in the use of the present interstate-commerce regulations.

Mr. BRANTLEY. May I interrupt you to ask a question?

Mr. RUSSELL. Certainly, sir.

Mr. BRANTLEY. You understand the law now to be that the moment liquor is shipped from one State into another and delivered to the original consignee it becomes subject to the law of that State?

Mr. RUSSELL. After delivery.

Mr. BRANTLEY. Now, do I understand that you are seeking the power in a State to prohibit the importation of liquor at all into a State?

Mr. RUSSELL. What we are seeking through the Littlefield bill, what we desire to see, is that the whole question of the application of the law to the liquor question shall apply when it crosses the line, whatever those regulations may be, leaving it to the citizenship of the States, acting through their legislators, to determine what those regulations may be.

Mr. BRANTLEY. It can not be sold now in the States unless the laws of the State are violated; the question of sale the State now absolutely regulates; the additional power you seek is to allow the State to prevent it from being imported?

Mr. RUSSELL. If the State legislature should see fit to do that; to provide that it might not be sold for any purpose.

Mr. BRANTLEY. Well, having the full and complete power to prohibit the sale, what would you acquire by the Littlefield bill would be to prohibit the importation.

Mr. RUSSELL. To reach it before it is delivered to the consignee in railroad stations and express offices.

Mr. BRANTLEY. That is to prohibit its importation?

Mr. LITTLEFIELD. Well, very likely.

Mr. RUSSELL. If the State desires to do that, that is what we insist the State ought to have the right to do. Of course, what will be done in the States will depend upon the public sentiment in those States and the legislation enacted in view of that public sentiment. Now, take the proposition to amend the law, which it is reported is considered possible by the committee, the same as last year, where you except in the shipment the delivery for personal use.

Now, while that seems a reasonable proposition, in view of the fact that most of the States allow the sale and delivery for personal use—the Ohio statute, for instance, provides that in the case of sale it excepts the sale for personal consumption, personal use, and, I think, that is the statute in the case of some other States—yet we could conceive it possible that a State legislature might think best to prohibit even the delivery of liquors for personal use. They might see fit to do that. What I insist upon is that the States have a right to do that if they choose to do that; good lawyers insist that it would be a constitutional provision to prevent the sale for personal use if the legislature saw fit to do so.

Mr. BRANTLEY. Did not the Supreme Court in the South Carolina dispensary case say the right to receive liquor for personal use was a right granted by the Constitution of the United States?

Mr. RUSSELL. That may be so, possibly.

Mr. BRANTLEY. And if the Supreme Court has said that is a right granted by the Constitution could the State take away that right from the individual?

Mr. RUSSELL. As good a lawyer as the dean of the Harvard law school is teaching the class there that the legislature of the State would have the right, in view of the evil effect of alcoholic liquors on public health and public morals, to prohibit their sale for personal use if the State saw fit so to do.

Mr. PALMER. Mr. Brantley has stated what the Supreme Court said about that; of course the dean of the Harvard Law School may be wiser, and no doubt he is, but the Supreme Court's decision is what we have to recognize at present.

But the right of persons of one State to ship liquor into another State to a resident for his own use is derived from the Constitution of the United States and does not rest on the grant of the State law. Either the conditions attached by the State law unlawfully restrain the right or they do not. If they do—and we shall hereafter examine this contention—then they are void.

Now, if a man has a right to ship it into a State for his own use evidently the man in the State has the right to receive it, and that they say is a constitutional right which does not rest on the grant of the State law.

Mr. LITTLEFIELD. And the court here were considering this interstate commerce clause specifically when they used that language, and

the case of *Vance v. Vandercook* rested entirely on the question as to whether the individual to whom the liquor was shipped could have it delivered to him for personal use. Of course if under *Rhodes v. Iowa* he could have it delivered to him for sale it would be absurd to say that he could not have it delivered to him for personal use, and it was a case of personal use and not a case of sale that the court was passing upon there. The court was construing this interstate commerce clause when it held that the Constitution did guarantee the right to have the liquor delivered, and so it does, under the interstate commerce clause as it now holds, under the construction of the court in *Rhodes v. Iowa*.

Mr. PALMER. Then the proposition is to change the law to get around the constitutional right and amend it by some legislative action.

Mr. LITTLEFIELD. The only way he gets a constitutional right is under the interstate commerce clause, and when the interstate commerce clause incumbrance is removed the only thing standing in the way of the State carrying out that law will be removed. Before the Wilson law he had a right to receive it and sell it in the original package; the Constitution of the United States gave him the right to sell it in the original package.

The Wilson law removed the interstate-commerce clause perhaps to that extent and did not allow him to sell it, pro tanto it deprived him of his interstate-commerce right under the interstate-commerce clause; so, pro tanto, in this case there is nothing in *Vance* and *Vandercook*—because they were there expressly considering the question of whether liquor should be delivered to a man in South Carolina for his personal use, and clearly under the Wilson law, the court having held that it did not arrive until it reached the hands of the consignee, of course he had a right to receive it—and in connection with that case and under the interstate-commerce clause the court used that language. I think that is an exact statement, Brother Palmer, of the situation.

Mr. DINWIDDIE. Is it generally known that the Supreme Court of the United States has actually passed upon the proposition affirmatively, that a man can not manufacture intoxicating liquors for his own personal use contrary to the laws of the State; is that generally known?

Mr. BRANTLEY. That is a matter that the State regulates; this is a matter of importation into the States under the protection of the Constitution of the United States.

Mr. DINWIDDIE. Yes, but you asked that question whether under the case of *Vance v. Vandercook* a man has a constitutional right to import for his own personal use?

Mr. BRANTLEY. But the right to manufacture liquor in a State is a matter that Congress has nothing to do with; but the right to import from another State is a matter that comes under the jurisdiction of Congress and of the Constitution of the United States under the interstate-commerce clause.

Mr. LITTLEFIELD. Yes; the interstate-commerce clause.

Mr. DINWIDDIE. Which reads that Congress shall have the power to regulate commerce among the several States.

Mr. PALMER. Do you think that gives the right to prohibit commerce?

Mr. DINWIDDIE. Yes.

Mr. SMITH, of Kentucky. That is hardly a fair statement. The

proposition is, Has Congress the power to so regulate commerce that the State can exercise power over interstate commerce in that State.

Mr. BRANTLEY. It is not a question of Congress establishing rules for the regulation of commerce, but the proposition is that Congress can relinquish its jurisdiction and let the States take it.

Mr. PALMER. This question was altogether settled in *Scott against Donald* (165 U. S.), that Congress could under the interstate-commerce clause prohibit the importation of anything recognized as an article of commerce.

Mr. BRANTLEY. Perhaps.

Mr. PALMER. In the exercise of the police power and under the Minnesota act, they undertook under the guise of an inspection law to prohibit the importation of cattle into the State of Minnesota, and Justice Harlan said that meat was a well recognized article of diet throughout the United States, and Congress could not prohibit the use of meat in Minnesota, and that the State could not pass a law prohibiting in Minnesota the use of meat that came from other States.

Mr. RUSSELL. I was going to leave these questions to Mr. Dinwiddie:

Mr. PALMER. You were introduced as the attorney of the association, and I supposed we would have a right to question you.

Mr. BRANTLEY. If the Supreme Court really meant what it said, that a man had the constitutional right to import liquors for his own use—

Mr. RUSSELL. Under the existing law.

Mr. BRANTLEY. And under the Constitution—their language was that he had the right under the Constitution—and I apprehend whatever right he has under the Constitution Congress can not take from him.

Mr. SMITH. You drift into an error right there, I think, Judge Brantley.

Mr. BRANTLEY. This is the question I wanted to ask Mr. Russell. If that construction of the Constitution is correct, would it not tend to save the validity of this very law by making it comply with that language of the Constitution, or otherwise would you not run the risk of having your whole law thrown out?

Mr. RUSSELL. The law has been thoroughly looked into, and I think we would be entirely satisfied with it.

Mr. BRANTLEY. You were speaking specifically against that amendment, and I was simply asking you whether that amendment would not tend to save the validity of the law.

Mr. RUSSELL. Of course what we object to is an amendment that is absolutely sure to open the way for evasions and to weaken the possible good results that would come from a clean turning over of this question to the States without any amendments. You could go ahead and provide amendments allowing shipments, say, for mechanical uses, for pharmaceutical purposes, and go on and name the various purposes the State recognizes as proper uses of intoxicating liquors, but what we ask for at the hands of the committee and at the hands of Congress is a law that will turn the handling of the whole question over to the States much in a local-option way.

I have nothing further to say except to emphasize the fact that the public sentiment of this country taken together is up to the standard of the passage of the Littlefield bill, and we believe that the courts of the country taken together will stand by Congress in such an enactment.

Of course you are confronted here in the consideration of this question by the expressions of popular sentiment and the personal views of individuals on both sides of the question, and men come here, as we heard them to-day, expressing their opposition to this bill for various reasons, personal in their character, and I am ready to concede that the friends of this measure appear here in the same way, ready to stand by their position from the standpoint of their judgment, and willing to stand by it from the standpoint of citizenship.

I felt some indignation, Mr. Chairman, when the speaker here this afternoon gave utterance to the sentiment that some of the Members of Congress with whom he had conversed were proposing to vote for the measure upon the ground, not that they thought it was a reasonable proposition to submit the question to the States, but upon the ground that their constituents were taking a cranky view of the question, and that they were compelled to go against their own judgment because of the sentiment in their districts. One speaker said, "I consider it unfair and cowardly upon the part of the people who thus bring their influence to bear upon Members of Congress." But, Mr. Chairman, is not that exactly what those who represent the interests of the other side are doing and have been doing in the past years of our experience in all these States?

Quite recently, Mr. Chairman, a very clear-cut and lucid editorial upon this question was written and published in the New York Times. It was headed "Fighting fire with water," and the editorial went on to say that the liquor dealers of New York State and their friends among the politicians were complaining because an organization had been formed in the State of New York, which was going up to Albany to insist that the legislature should pass an extension of the local option privileges from the towns to the cities of the State, giving the people the right, if they had a majority of the sentiment that way, to vote the saloon out, and that they were resenting the fact; but the Times went on to say that this is exactly the method that has been the practice of the liquor dealers in the past; that they have insisted that they had the votes to stand by or defeat men upon the proposition that they should stand by them and their interests in legislation, and the Times went on to say that they thought it was a good omen, and a good day had come when the temperance people had waked up to stand by those men that did right on the question, and they considered that fighting fire with water, and that that was the proper way to carry on the campaign. That was the New York Times.

Now, one of the speakers this morning read from an editorial in a German paper published in Chicago, in which he sought to bring in before this committee this very proposition to impress the committee and to impress Congress with the idea that the German-Americans as a class would be against Members of Congress who should put themselves on record in favor of this measure, and he read that portion of that editorial very clearly and emphatically which said "No Congressman favoring these measures is entitled to the indorsement of German-American citizens in the future." Now, after all, is it not true that public sentiment is really the thing that is in the scale in the consideration of this question?

I think you will all agree as lawyers, having carefully considered it, that it is perfectly constitutional for the Congress of the United States to pass the Littlefield bill, that Mr. Littlefield has been within the

range and purview of the Constitution in drawing it. After all, it is a question, when it comes to be put up to a vote in Congress, whether the people of the United States will stand by Congress in the enactment of it or not, or whether there be classes of the people, racial or otherwise, that will be so much offended and will carry that offense so positively into their political action as that it will make it improper and unwise and unconstitutional for the Congress to pass the measure.

Mr. PALMER. Suppose a member of this committee or a number of members of this committee would think the measure unconstitutional; would you expect them to vote for it?

Mr. RUSSELL. No, I should not say so; I argue, of course, that it is constitutional.

Mr. PALMER. You would not ask Members of Congress to vote for it if they thought it was unconstitutional?

Mr. RUSSELL. Not at all.

Mr. PALMER. This is not a town meeting to determine what the town sentiment is, but the question is whether it is constitutional.

Mr. RUSSELL. I am proceeding to answer these statements made here from the standpoint of racial notions about this question, and what I wanted to say in connection with that is that it is indeed a good day we have fallen upon now when questions of this kind can be considered from the standpoint of public sentiment and organized public sentiment, so that when men do perform their duty in a manly and courageous way in Congress or in State legislatures they are stood by in an organized way, just as it has often been in past years that they were not stood by on the part of the good people and moral people who were interested in this kind of legislation.

We have had a good many illustrations recently in different States of the ability of the moral people to stand by the kind of men who stand by this kind of legislation. Take it in New York. A bill was introduced by a member of the legislature from Westchester County providing for local option, and the legislature, after a good deal of personal appeal, did pass that measure through the assembly. Then it was a question, which is always up before us, as to whether we could justify the requests and assurances we had made to the different members of the legislature, and in January of this year we were able to demonstrate the fact that we had popular sentiment with us, for not a single member of the legislature who voted in favor of the extension of the power and privilege of the people on this liquor question, not a single man, fell by the way, either for renomination or reelection, by reason of having voted for the local-option measure, and in case of the member of the legislature referred to, while the year before he got 700 majority, his majority was increased this time to nearly 3,000.

So I want to say it is not unfair and it is not cowardly for the moral sentiment of the community to express itself in dealing with such a provision as this, that will give the entire control of the question to the States, and it is not cowardly or unfair for these men to come to the front and stand by the men who stand by that kind of a measure. As the gentleman from Kansas has said this afternoon, there are a good many German-Americans in this country who are in favor of the very kind of legislation that we are pressing here. We have in connection with our organization two or three bodies of Christian people made up of Germans who speak the German language and whose sermons are preached in German. The German Episcopal and German

Evangelical churches stand in favor of progressive temperance legislation, and that is true to a great extent with a great many Lutherans in this country. It will not do to group the Germans by themselves and say they oppose this legislation. So I ask you on behalf of the organization I represent to report this bill without amendment, and as an organization I want to say that we propose to stand by the men who stand by the bill.

ARGUMENT OF REV. E. C. DINWIDDIE, LEGISLATIVE SUPERINTENDENT ANTISALOON LEAGUE OF AMERICA.

Mr. DINWIDDIE. Mr. Chairman and gentlemen of the committee: I want to beg the pardon of the committee for something I can not help, and at the same time beg its indulgence. I have been unfortunate in being housed for four weeks with a case of sickness, and have just come out to-day for the first time, so that I am anything but at par. However, I have some considerations which I hope to present to the committee, some of which I think have not been presented before, and while I do not ask not to be interrupted, before I get through I hope to cover most of the points that have in a sense been in controversy, and if you will allow me to finish in that way I shall be very glad to be subject to any catechization which the committee desires. At the same time, if I should make a misstatement of fact or misquote a decision or should err in the law, I should be very glad to be called down on the spot, for I shall attempt not to err in those ways, and, of course, I believe we best serve any cause by being absolutely accurate in our statements and terminology.

We are here in behalf of the Littlefield bill (H. R. 13655). This bill is the same in intent as the Hepburn-Dolliver bill, so called, introduced in the Fifty-eighth Congress. The first section is slightly modified in language, so that its actual intent as a direct regulation of commerce by Congress is made clearly manifest. A second section is added which conforms to the well-known practice and usage in the commercial world in which C. O. D. shipments are held subject to the order of the consignor until actually delivered to the consignee after the payment of the price of the goods transported, together with the transportation charges by the consignee, and generally with an additional charge, designated in the business world as a C. O. D. return charge, to pay the cost of transmission by the common carrier of the purchase price from the consignee to the consignor at the original place of shipment.

It was my intention to set forth at all necessary length the necessity for some adequate legislation of this character to meet a condition which was unexpectedly imposed upon the States by the decision of the United States Supreme Court in what were known as the Iowa Transportation and Original Package cases, known as the *Bowman v. Northwestern Railway* (125 U. S., p. 465) and the *Leisy v. Hardin* (135 U. S., 100) cases, respectively. It has become, however, almost unnecessary for me to do this, in view of the full and convincing statements from their own observation concerning the need of such legislation by Congress which have been made before this committee during the progress of these hearings, particularly by Mr. Williams, of Mississippi, and Judge Smith, of Iowa, both members of Congress and both personally cognizant of existing difficulties in the enforcement of

State legislation because of the inaction of Congress under the decisions referred to and the later construction of the *Wilson* law in *Rhodes v. Iowa* (170 U. S., 412). I shall take occasion, however, simply to advert to such necessity when the proper point in the history of Supreme Court decisions touching intoxicating liquors is reached in this argument.

I desire to set forth succinctly the various decisions of the United States Supreme Court from the earliest cases down to the present, so far as they have a bearing upon the proposed legislation before your committee. I expect to be able to show that while admitting the exclusiveness of the power of Congress to regulate interstate commerce as delegated to it by section 8 of article 1 of the Federal Constitution, it is the unquestionable fact that the States never delegated what are universally known as their police powers, and under which are grouped all legislation for the conservation of the public health, the public morals, and the prosperity and peace of their own citizens, to Congress. This was never contended, that I am aware of; but in order that there might be no doubt whatsoever upon the subject the people of the various States added a specific amendment to the Federal Constitution whereby they declared that all powers not delegated to the United States were reserved to the States or to the people. (Tenth amendment to the Federal Constitution.)

It is also easily demonstrable that under these reserved powers they exercised complete control of the liquor traffic within their borders, whether that traffic was wholly internal or whether the liquors had been imported from foreign countries or from sister States. This was done in the absence of any specific regulation of the same traffic by Congress. This continued practically unassailed from the adoption of the Federal Constitution until the celebrated license cases came before the Supreme Court on error from the State courts of Massachusetts, Rhode Island, and New Hampshire. The cases for the liquor-traffic men were argued by the most eminent counsel which the country afforded at that time, Daniel Webster and Rufus Choate appearing for those interests against the constitutionality of the State legislation of the Commonwealths referred to.

Although the eminent judges on the bench at the time these cases were tried in 1847 did not wholly agree in the reasoning by which they reached their conclusions, Chief Justice Taney and five other justices delivered able, and in some cases, lengthy opinions, and a sixth associate justice, Mr. Justice Nelson, announced his concurrence in the views of the Chief Justice and Mr. Justice Catron, and all reached the decision that the legislation of these States was valid as an exercise of their police powers, and although in two of the cases, namely, *Thurlow v. Massachusetts* and *Fletcher v. Rhode Island*, the liquors which gave rise to the controversy were of foreign importation, and in the case of *Pierce v. New Hampshire* the liquor was a barrel of gin imported from a sister State coastwise into the State of New Hampshire, and the State regulations, therefore, by the imposition of a tax or license fee and in one case by the total prohibition of the sale, amounted to a regulation of commerce with foreign countries and among the States of the Union, they were nevertheless not repugnant to the commerce clause of the Constitution, because Congress had not legislated upon the subject, and the virtual holding of the court was that the silence of Congress upon a subject of that character, which vitally affected

the effect of the internal laws of the State for the protection of the health and morals of their people, indicated thereby its willingness that the States should so legislate as to conserve their welfare in that regard, and so far as outside interference was concerned should in that way be able to preserve the integrity of their policy on that question. These facts are abundantly substantiated in the License cases, reported in 5 Howard, 504 to 633.

I go further to say that on the subject of intoxicating liquors that decision was acquiesced in by Congress by its continued silence, was looked upon as the supreme and controlling law by the States in the shaping of their legislation on this question, and was recognized by the courts up to the time of the Iowa cases, in 1888 and 1890, respectively, to which I have already referred. Indeed, they were only directly overruled upon the announcement of the opinion in *Leisy v. Hardin*, April 28, 1890.

I need not emphasize before this committee the value to the States of what are commonly known as their police powers. They are vital to their prosperity and integrity. These statements run all the way through the long line of judicial decisions sustaining their exercise in the matter of regulating and controlling and even prohibiting traffic in intoxicating liquors. From the License cases, reported in 5 Howard, down through *Bartemyer v. Iowa* (18 Wall., 129); *Beer Company v. Massachusetts* (97 U. S., 25); *Tiernan v. Rinker* (102 U. S., 123); *Foster v. Kansas* (112 U. S., 201); *Mugler v. Kansas and Kansas v. Ziebold* (123 U. S., 623); *Bowman v. Northwestern Railway* (125 U. S., 465) and *Kidd v. Pearson* (128 U. S., 1); *Eilenbecker v. Plymouth County* (134 U. S., 31); *Leisy v. Hardin* (135 U. S., 100); *Crowley v. Christensen* (137 U. S., 86), and numerous cases since, including the more recent cases of *Rippey v. Texas* (193 U. S., 504) and *Lloyd v. Dollison* (194 U. S., 445), all of these go to show the absolute necessity of the exercise of these powers by the States.

Mr. Justice Harlan emphasized this point in the able dissent in the *Bowman* case which he delivered on behalf of himself and Chief Justice Waite and Associate Justice Gray when he quoted *Sherlock v. Alling* (93 U. S., pp. 99, 103):

In conferring upon Congress the regulation of commerce it was never intended to cut States off from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country.

And again he quoted from *Patterson v. Kentucky* (97 U. S., 501, 505) wherein "The principle was affirmed that the police power of the State was not surrendered when authority was conferred upon Congress to regulate commerce with foreign nations and among the States." His concluding sentence in that able dissent was:

The reserve power of the States to guard the health, morals, and safety of their people is more vital to the existence of society than their power in respect to trade and commerce, having no possible connection with those subjects.

Still more emphatic as showing the wisdom of that reservation, which was designed to leave with the States the untrammelled exercise of their police powers, are some of the statements in the dissenting opinion of Mr. Justice Gray on behalf of himself and Justices Harlan and Brewer in the Original Package Case of *Leisy v. Hardin*, heretofore referred to. In referring to the case of *Kidd v. Pearson* (128 U. S., 1), the court unanimously sustained the prohibitory statute of Iowa

under review, which prohibited the manufacture and sale of intoxicating liquors for exportation. The court, in showing how impracticable it would be for Congress to regulate the manufacture of goods in one State to be sold in another, said:

The demands of such supervision would require not uniform legislation generally applicable throughout the United States, but a swarm of statutes only locally applicable and utterly inconsistent.

A situation more paralyzing to the State governments and more provocative to conflicts between the General Government and the States and less likely to have been what the framers of the Constitution intended it would be difficult to imagine.

Mr. Justice Gray continued:

The language thus applied to Congressional supervision of the manufacture within one State of intoxicating liquors intended to be sold in other States, appears to us to apply with hardly less force to the regulation by Congress of the sale within one State of intoxicating liquors brought from another State. How far the protection of the public order, health, and morals demands the restriction or prohibition of the sale of intoxicating liquors is a question peculiarly appertaining to the legislatures of the several States, and to be determined by them upon their own views of public policy, taking into consideration the needs, the education, the habits, and the usages of people of various races and origin, and living in regions far apart and widely differing in climate and in physical characteristics.

The local option laws prevailing in many of the States indicate the judgment of as many legislatures that the sale of intoxicating liquors does not admit of regulation by uniform rule over so large an area as a single State, much less over the area of a continent. It is manifest that the regulation of the sale, as of the manufacture of such liquors manufactured in one State to be sold in another, is a subject which, far from requiring, hardly admits of a uniform system or plan throughout the United States. It is, in its very nature, not national, but local, and must, in order to be either reasonable or effective, conform to the local policy and legislation concerning the sale or the manufacture of intoxicating liquors generally. Congress can not regulate this subject under the police power, because that power has not been conceded to Congress, but remains in the several States; nor under the commercial power, without either prescribing a general rule unsuited to the nature and requirements of the subject or else departing from that uniformity of regulation which, as declared by this court in *Kidd v. Pearson*, above cited, it was the object of the commercial clause of the Constitution to secure.

* * * * *

I have read that much along that line with regard to the reserved police powers of the State and want to add a few sentences more, for this reason: That contrary to the statement made here four weeks ago, when I attended, contrary to the statement of the attorney of the Brewers' Association, this legislation is not designed to secure the better enforcement of any specific class of legislation in the States. The whole object of this bill is to subject intoxicating liquors upon coming within the boundary of the State, to the jurisdiction of the State into which they go, so that whatever the policy of the State may be, whether it be prohibition or license or taxation or local option or the dispensary system, foreign liquors brought from other States within the boundary of the State shall be placed upon an equal footing with domestic liquors produced therein, and I go further to say that another statement in the brief of counsel for the Brewers' Association erred when it said that the design of this bill was to effectuate the policy of prohibition in the States and that it was designed to do what Congress never intended to do when it originally passed the Wilson law sixteen years ago.

I happen to have looked that matter up with considerable care. I have here the report which Senator Wilson brought in from the Judiciary Committee of the Senate advocating at that time the passage of

the Wilson law, and that report distinctly says that the design of the legislation was to subject liquors to the jurisdiction of the laws of the various States as soon as they entered the State. Mr. George—and I think I need not say that Senator George of Mississippi had a reputation, and doubtless had it justly, of being one of the ablest lawyers that ever sat in the Senate of the United States—followed with an opinion advocating the passage of the Wilson law in which he said practically the same thing, that the whole design was to restore to the States the reserved police powers of the State which were practically wrested from them summarily and unexpectedly by the Supreme Court decision in the *Leisey v. Hardin* case, and to give to the States absolute and untrammelled control of liquors shipped in from other States as they already had control of liquors produced within the State itself.

MR. LITTLEFIELD. And did not Senator George say in that report that his opinion was that they still had that right, although the court had held the other way?

MR. DINWIDDIE. Absolutely.

MR. LITTLEFIELD. And that inasmuch as the court had so held, he recommended the passage of the legislation that there might not be any legal obstacle to what he believed to be the inherent right of the State?

MR. DINWIDDIE. Yes, that is absolutely true, and I will revert to that now, if you will permit me. I will say just exactly what Senator George did hold. In the first place, as you all probably know, reading the *Bowman v. Northwestern* decision, Justice Matthews in delivering the opinion of the court in that case, practically hinted—almost said in terms—that the importation of intoxicating liquors from another State doubtless carried with it the right to sell in original, unbroken packages, and he cited *Brown v. Maryland* (12 Wheat., 439), the original fundamental case in which that very principle was upheld, and which has always been maintained in the decisions of the United States Supreme Court.

Doubtless it was with that idea that was thrust out—it is true it was a dictum of the court in the decision of the *Bowman* case, but it was thrust out—and in view of what might happen I take it that in the Fiftieth Congress a bill was introduced substantially the same as the Wilson law in the fifty-first, and Senator George united with a majority of the Judiciary Committee of the Senate against the passage of the law on the ground that the States had the power then under their police powers to handle the entire subject in their own way, and that there was not any necessity for any such legislation. But immediately after the adjournment of the Fiftieth Congress the liquor men opened up the sale of liquor in some of the States in original packages, and the *Leisey v. Hardin* case was brought to the Supreme Court and the court held that the sale of intoxicating liquors imported from another State was constitutional, and that the State law could not abridge it.

MR. LITTLEFIELD. That is in the original package?

MR. DINWIDDIE. Yes, in the original package. And then Senator George, as Mr. Littlefield suggests, was face to face with the Wilson bill proposition. He never believed that the States had parted with their reserved police power; at the same time here was the Supreme Court of the land, the court of final jurisdiction, that held against him, that the reserved police powers were not competent in these States to forbid the sale of liquors in the original package when transported

into the States from other States, and so he did the only thing that was left for a practical man to do; he supported legislation that in the preceding Congress did not have the concurrence of his judgment simply because he did not think it was necessary legislation. He believed that the decision of the Supreme Court took away powers from the States which they had always had, and that they ought not to have been wrested from the States in the manner in which they were.

But this was the supreme law of the land after the court had pronounced that opinion, and so Senator George joined with the majority in the Senate and helped pass the Wilson law for the purpose, as he said in his concurring opinion, of giving back to the States powers which they ought to have, which they needed, which were vital to their existence, and which, in his judgment, ought never to have been taken away from them, or, more properly speaking, of removing a barrier to the operation of State laws on this subject.

Just one thing more along that line. I continue the quotation from Mr. Justice Gray on the police powers of the States:

The protection of the safety, the health, the morals, the good order, and the general welfare of the people is the chief end of government. *Salus populi suprema est lex.* The police power is inherent in the States, reserved to them by the Constitution, and necessary to their existence as organized governments. The Constitution of the United States and the laws made in pursuance thereof being the supreme law of the land, all statutes of a State must, of course, give way, so far as they are repugnant to the National Constitution and laws. But an intention is not lightly to be imputed to the framers of the Constitution, or to the Congress of the United States, to subordinate the protection of the safety, health, and morals of the people to the promotion of trade and commerce.

The police power extends to the control and regulation of things which, when used in a lawful and proper manner, are subjects of property and of commerce, and yet may be used so as to be injurious or dangerous to the public safety, the public health, or the public morals. Common experience has shown that the general and unrestricted use of intoxicating liquors tends to produce idleness, disorder, disease, pauperism, and crime.

The power of regulating or prohibiting the manufacture and sale of intoxicating liquors appropriately belongs, as a branch of the police power, to the legislatures of the several States, and can be judiciously and effectively exercised by them alone, according to their views of public policy and local needs; and can not practically, if it can constitutionally, be wielded by Congress as part of a national and uniform system.

The statutes in question were enacted by the State of Iowa in the exercise of its undoubted power to protect its inhabitants against the evils—physical, moral, and social—attending the free use of intoxicating liquors. They are not aimed at interstate commerce; they have no relation to the movement of goods from one State to another, but operate only on intoxicating liquors within the territorial limits of the State; they include all such liquors without discrimination, and do not even mention where they are made or whence they come. They affect commerce much more remotely and indirectly than laws of a State (the validity of which is unquestioned) authorizing the erection of bridges and dams across navigable waters within its limits, which wholly obstruct the course of commerce and navigation; or than quarantine laws, which operate directly upon all ships and merchandise coming into the ports of the State.

If the statutes of a State restricting or prohibiting the sale of intoxicating liquors within its territory are to be held inoperative and void as applied to liquors sent or brought from another State and sold by the importer in what are called "original packages," the consequence must be that an inhabitant of any State may, under the pretext of interstate commerce, and without license or supervision of any public authority, carry or send into and sell in any or all of the other States of the Union intoxicating liquors, of whatever description, in cases or kegs, or even in single bottles or flasks, despite any legislation of those States on the subject, and although his own State should be the only one which had not enacted similar laws. It would require positive and explicit legislation on the part of Congress to convince us that it contemplated or intended such a result.

The decision in the License Cases, 46 U. S., 5 How., 504, by which the court, maintaining these views, unanimously adjudged that a general statute of a State, prohibiting the sale of intoxicating liquors without license from municipal authorities, included liquors brought from another State and sold by the importer in the original barrel or package, should be upheld and followed, because it was made upon full argument and great consideration; because it established a wise and just rule, regarding a most delicate point in our complex system of government, a point always difficult of definition and adjustment, the contact between the paramount commercial power granted to Congress and the inherent police power reserved to the States; because it is in accordance with the usage and practice which have prevailed during the century since the adoption of the Constitution; because it has been accepted and acted on for forty years by Congress, by the State legislatures, by the courts, and by the people, and because to hold otherwise would add nothing to the dignity and supremacy of the powers of Congress, while it would cripple, not to say destroy, the whole control of every State over the sale of intoxicating liquors within its borders.

The silence and inaction of Congress upon the subject, during the long period since the decision in the license cases, appear to us to require the inference that Congress intended that the law should remain as thereby declared by this court, rather than to warrant the presumption that Congress intended that commerce among the States should be free from the indirect effect of such an exercise of the police power for the public safety, as had been adjudged by that decision to be within the constitutional authority of the States.

I have adverted to the police powers of the States and in the extracts from the foregoing judicial opinions have sought to emphasize their importance at this juncture, because it is important to bear in mind that these powers are vitally necessary to the integrity of civil government and to show that they are best exercised by the States themselves. In fact, under our system of government they can be exercised by no other authority. The Congress of the United States has no powers of police. These powers were wisely reserved to the States, and our whole contention is that the latter should be absolutely unimpaired in their full legitimate exercise, and that under its delegated authority to regulate commerce among the States Congress should cooperate with the States to the fullest possible extent in preventing the agencies of interstate commerce from being used in such a way as to break down and practically nullify the legitimate legislation of the States passed in the unquestioned exercise of their police powers.

In the *Bowman v. Northwestern Railway* case, decided March 19, 1888, the Supreme Court held—

That a State can not, for the purpose of protecting its people against the evils of intemperance, enact laws which regulate commerce between its people and those of other States of the Union unless the consent of Congress, express or implied, is first obtained.

In this case also the court made use of the expression in closing its opinion:

It is easier to think that the right of importation from abroad and of transportation from one State to another includes, by necessary implication, the right of the importer to sell in unbroken packages at the place where the transit terminates, for the very purpose and motive of that branch of commerce which consists in transportation is that other and consequent act of commerce which consists in the sale and exchange of the commodities transported. Such, indeed, was the point decided in the case of *Brown v. Maryland* (12 Wheaton, 419) as to foreign commerce, with the express statement in the opinion of Chief Justice Marshall that the conclusion would be the same in the case of commerce among the States.

The liquor people were quick to take advantage of this suggestion although the decision on this point was definitely reserved, and original package saloons were started all over the States of Iowa and Kansas, particularly, and the spectacle of foreign manufacturers and liquor dealers shipping liquors into these States in which the prohibitory

policy prevailed and selling them, either through their own agencies or to citizens of those States whom they could secure to purchase their liquors, for in the original unbroken packages the citizens of Iowa and Kansas were conclusively interdicted from manufacturing and selling such liquors within their States.

I have already adverted to that in the extemporaneous remarks that I made, and it was afterwards carried out in the *Leisey v. Hardin* decision.

Mr. BIRDSALL. I notice that this Littlefield bill does not apply to foreign countries at all; it simply applies between States and Territories.

Mr. DINWIDDIE. I should be very glad to have it made to apply to foreign countries.

Mr. BIRDSALL. I wanted to find out whether that was a mere omission, or whether it was intentional.

Mr. LITTLEFIELD. I can say that it is merely an inadvertence.

Mr. BIRDSALL. And there is no legal objection to making it apply to foreign countries?

Mr. LITTLEFIELD. No.

Mr. DINWIDDIE. I do not think there is. But, pardon me, there is this one thing of a practical nature to be taken into consideration. Our difficulties, of course, are not nearly so great in the matter of importations from foreign countries as from importations from one State to another.

Mr. BIRDSALL. I could not see any legal difficulty there.

Mr. DINWIDDIE. None at all.

The firm of Gus Leisy & Co., of Peoria, Ill., had shipped liquors into the city of Keokuk, Iowa, and the liquors had been seized by the marshal of the city and ex officio constable of the township, and a suit of replevin was brought to secure possession of the confiscated liquors. The case ultimately came before the Supreme Court of the United States, and the decision was reached, not, however, without the qualification of an able dissent by Justices Gray, Harlan, and Brewer, previously referred to, that—

A statute of a State prohibiting the sale of any intoxicating liquors, etc., is, as applied to a sale by the importer and in the original packages or kegs, unbroken and unopened, of such liquors manufactured and brought from another State, unconstitutional and void, as repugnant to the clause of the Constitution granting to Congress the power to regulate commerce with foreign nations and among the several States.

This decision was rendered on behalf of the court by Mr. Justice Fuller, but in this connection, while undoubtedly this reversed the former holding of the court and interpreted the silence of Congress with respect to interstate commerce in any particular commodity to indicate its will that commerce in that article should be free, it became the supreme law and to a very large degree, as undoubtedly recognized by a majority of the court itself and specifically pointed out and deplored in the minority dissent heretofore referred to, it practically rendered useless much of the legislation of the States upon the liquor question, because while the States might prohibit their own citizens from manufacturing and selling intoxicating liquors within the borders of the State, outside manufacturers and dealers could, so long as Congress did not legislate to relieve the situation, send their wares into the State and have them sold in the original packages in utter

defiance of the expressed will of the people of that State, as shown either in constitutional or statutory enactments or both.

As throwing light on the subsequent action of Congress and as also shedding light on the power of the national legislature to enact such a measure as we now advocate before your committee, I desire to call attention to some suggestions which were incorporated in the majority opinion, both in the *Bowman v. Northwestern Transportation Case* and also in the *Leisy v. Hardin Original Package Decision*. Mr. Justice Matthews, in delivering the former, said (found on p. 493 of volume 125, U. S.):

It (a State) can not, *without the consent of Congress, express or implied*, regulate commerce between its people and those of other States of the Union, in order to effect its end, however desirable such a regulation might be.

Throughout the *Leisy* case the court, while constrained to declare the Iowa statute in controversy unconstitutional, nevertheless, seeing the embarrassing, if not intolerable, situation in which such decision would leave the States in respect of the exercise of their police powers as affecting the liquor traffic, used the following expressions, indicating clearly that the desired redress lay in legislation by Congress:

* * * unless placed there by Congressional action (135 U. S., p. 108); hence, inasmuch as interstate commerce consisting in the transportation, purchase, sale, and exchange of commodities is national in its character and must be governed by a uniform system, *so long as Congress does not pass any law to regulate it or allow the States to do so* (ibid., p. 109); * * * can a State, in the absence of legislation on the part of Congress, prohibit either importation from abroad or from a sister State, or when imported, prohibit their sale by the importer? (ibid., p. 110); * * * essentially a regulation of commerce among the States and not sanctioned by the authority, *express or implied, by Congress* * * * (ibid., p. 119).

The responsibility is upon Congress, so far as the regulation of interstate commerce is concerned, to remove the restrictions upon the State in dealing with imported articles of trade within its limits, which have not been mingled with the common mass of property therein, if, in its judgment, the end to be secured justifies and requires such action (ibid., p. 124). * * * In the absence of Congressional permission to do so, the State had no right to interfere by seizure or any other action in the prohibition and sale by the foreign or nonresident importer (ibid., pp. 124-5).

I call attention to the fact that that is an unusual thing, from my reading of court decisions, for a court to point out to the legislature the method by which the court decision could be practically overcome; and yet the court recognizing the tremendous injustice—I think I may use that expression—that would befall the States from the very decision which they felt constrained to render in that case, went so far as to point out the method by which the necessary redress could come to the States.

In harmony with these suggestions from the court (and although the latter may not have been most careful in employing the language to indicate that there was redress from the situation which their decision forced upon the States, I may say in passing that such language on the part of the Supreme Court clearly indicated their judgment that there was a remedy and that it was entirely possible for Congress to administer it), and to remove the impediment to the exercise of the police powers of the several States occasioned by the silence of Congress, the Wilson law, so-called, approved August 8, 1890, was passed (26 Stat., 313, c. 728). That act provided—

that all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale or storage therein, shall, upon arrival in such State or Territory, be subject to the operation

and effect of the laws of such State or Territory, enacted in the exercise of its police powers to the same extent and in the same manner as though such liquors or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

The constitutionality of the Wilson law was questioned in the case of *in re Rahrer*, coming up from the circuit court of the United States for the district of Kansas, and its constitutionality was distinctly upheld by the court in an able opinion delivered by Chief Justice Fuller, who himself had delivered the opinion of the court in the *Leisy v. Hardin* case, in which he had also suggested that Congress could apply the remedy which that decision made necessary.

In a subsequent case coming up from the State of South Carolina, under the operations of the dispensary law of that State, the statute of South Carolina, in some of its provisions, was held to be unconstitutional on the ground that they were discriminatory of the products of other States (*Scott v. Donald*, 165 U. S., 58). The gist of the decision in the *Scott v. Donald* case, in which the provisions of the Wilson law were directly involved, is contained in the following excerpt from the opinion of the court, delivered by Mr. Justice Shiras, and found on page 101:

It is sufficient for the present cases to hold, as we do, that when a State recognizes the manufacture, sale, and use of intoxicating liquors as lawful, it can not discriminate against the bringing of such articles in and importing them from other States; that such legislation is void as a hindrance to interstate commerce, and an unjust preference of the products of the enacting State as against similar products of the other States.

The next case to come before the Supreme Court involving the provisions of the Wilson law was that of *Rhodes v. Iowa*, reported in 170 U. S., 412. The decision in this case, except as to the point that the moving of interstate commerce goods from the platform to the freight warehouse is a part of an interstate commerce transportation, turned on the interpretation of the language used by Congress in the Wilson law, and particularly the six words used in that act "arrival in such State or Territory."

The following language, employed by Mr. Justice White in delivering the opinion of the court in the *Rhodes* case, distinctly shows that the decision turned upon the construction of the language which I have just quoted:

The words "shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory" in one sense might be held to mean arrival at the State line; but to so interpret them would necessitate isolating these words from the entire context of the act and would compel a construction destructive of other provisions contained therein. But this would violate the fundamental rule requiring that a law be construed as a whole and not by distorting or magnifying a particular word found in it. It is clearly contemplated that the word "arrival" signified that the goods should actually come into the State, since it is provided that "all fermented, distilled, or other intoxicating liquors or liquids transported into a State or Territory," and this is further accentuated by the other provision, "or remaining therein for use, consumption, sale, or storage therein."

This language makes it impossible in reason to hold that the law intended that the word "arrival" should mean at the State line, since it presupposes the coming of the goods into the State for "use, consumption, sale, or storage." The fair inference from the enumeration of these conditions, which are all embracing, is that the time when they could arise was made the test by which to determine the period when the operation of the State law should attach to goods brought into the State. But to uphold the meaning of the word "arrival," which is necessary to support the State law, as construed below, forces the conclusion that the act of Congress in question authorized State laws to forbid the bringing into the State at all. This fol-

lows from the fact that if arrival means crossing the line, then the act of crossing into the State would be a violation of the State law, and hence necessarily the operation of the law is to forbid crossing the line and to compel remaining beyond the same. Thus, if the construction of the word "arrival" be that which is claimed for it, it must be held that the State statute attached and operated beyond the State line confessedly before the time when it was intended by the act of Congress it should take effect.

Although I intended to revert to this later on, inasmuch as I think of it now I will be glad to take up the question that was raised a moment ago and speak to it a moment, and that is the statement in the court's decision in the case of *Vance v. Vandercook* (165 U. S.) in which it has been held by some that the court has taken the right of a man in one State to import liquor from another State for his personal use to be an inalienable right which can not be abridged by legislation. Now, that statement has practically been made. I don't know whether that is the view that Mr. Brantley takes of the case or not, but at any rate the question which was raised a little while ago leads me to speak to that point, as to whether or not there is anything in the *Vance v. Vandercook* case which indicates the judgment of the Supreme Court of the United States to be that the right to import liquor from one State into another State is an inalienable right and can not be abridged by legislation.

Now, what did the court hold in *Vance v. Vandercook*? I have the volume here, but it is not necessary to refer to it. I can give the exact language. You can readily refer to it in 170 U. S. The court said:

The right of a man to import liquor from another State for his personal use is derived from the Constitution of the United States and does not rest on the grant of State law.

It is derived from the Constitution of the United States. Well, if it is derived from the Constitution of the United States, there must be some article or section of the United States Constitution from which it is derived. What is that section or article of the Federal Constitution which gives to a man in one State the right to import liquor from another State for his personal use and which right is inalienable?

The only section or article in the Federal Constitution that can be pointed to at all as touching the matter is section 8 of article 1, where the right to regulate commerce with foreign nations among the several States and with the Indian tribes is delegated to Congress. Is that not true? If that be true, then this rests absolutely, this so-called right rests absolutely upon that section which delegates to Congress the right to regulate commerce among the States. And the court naturally held, both for that reason and the reason that Mr. Littlefield suggested a little while ago, that it did not rest upon the grant of State law, and under all the decisions we have been discussing here this afternoon naturally they would have to hold that such a right did not rest upon the grant of State law.

MR. PALMER. The commerce among the States existed before the Constitution was enacted, did it not?

MR. DINWIDDIE. Yes; and each State absolutely controlled its foreign and domestic commerce before the Constitution of the United States—

MR. PALMER. And the only reason why that provision was put in the Constitution, as far as we can learn from the debate that was had at the time, was to prevent the States from shutting out things from other States by tariffs or taxes or adverse legislation.

Mr. DINWIDDIE. Absolutely true.

Mr. PALMER. So that when they gave Congress the power to regulate commerce it was not a power that enabled Congress to prohibit commerce altogether, was it?

Mr. DINWIDDIE. Absolutely. Congress, under its plenary power to regulate interstate commerce, has the right to prohibit in certain cases, and it has exercised it. Is that not true, Mr. Palmer?

Mr. BIRDSALL. There is nothing in that provision in article 8 or section 8 that gives me an absolute right to buy whisky or anything else in any other State?

Mr. DINWIDDIE. No; none at all, in my judgment. As long as such a right exists it exists because Congress, and not the States, does not so regulate interstate commerce as to interdict it.

Mr. PALMER. Has not any citizen the right to buy anything anywhere he pleases, independent of the Constitution or any State laws; is not that one of his natural rights?

Mr. DINWIDDIE. No; the courts have held—and I could cite you, if I were to take time, to the cases and pages—the courts have held, however, that all those rights are subject to the general right that every man shall conduct himself so that he shall not in his person and property injure others. The right of the States to regulate or license or tax the liquor traffic in any manner in their discretion, down to the passage of the fourteenth amendment, had been uniformly upheld by the Supreme Court; but when the fourteenth amendment was passed the liquor men thought they had an opportunity to get away from the decisions of the Supreme Court, and Mr. Birdsall probably remembers the first case under that amendment came up from Iowa, the case of *Bartemeyer v. Iowa*, in 18th Wallace, 129, and the Supreme Court held that the fourteenth amendment did not operate in such manner—that it was protection in the pursuit of lawful occupations which that amendment afforded.

Mr. BRANTLEY. Would I interrupt you—

Mr. DINWIDDIE. If you will pardon me a moment, I want to complete this. And then the next case came up from the State of Massachusetts when the Boston Brewing Company brought suit in order to enforce a provision of their charter in which they claimed that they had been divested of the right to manufacture beer, and under the fourteenth amendment they claimed they were being deprived of their vested right; and the Supreme Court held that the fourteenth amendment did not operate to protect a man in the exercise of an unlawful calling or trade.

And then another case from Kansas a year or two later—right here I should say the *Bartemeyer* case was reported in 18th Wallace; the *Beer Company* case from Massachusetts was reported in 97 U. S., and the *Foster* against Kansas, just mentioned, was reported in 112 U. S., 201, and the court in the last case, after having decided these three cases after the adoption of the fourteenth amendment, and all the same way, holding it did not operate to change the right of the State to control or regulate the traffic within its own bounds, said that this question was no longer open in that court. So a few years later, when the *Mugler v. Kansas* case came up, it was on the point that the plant of *Mugler* in Kansas had been practically confiscated and taken over by the State because he was manufacturing beer without proper authority from the State. They had some of the

ablest counsel in the country in this case, as those men generally do have in the conduct of these cases. They had Joseph H. Choate and Senator Vest, of Missouri, as counsel for the appellants in this case.

The court held it was not a natural right of a citizen to manufacture liquors, even for his own personal use. Counsel pressed with great force upon the court the fact that the simple manufacture of this liquor did not injure anybody else; it was not like the manufacture of gunpowder or the conduct of a fertilizer plant. They laid great stress on the fact that this man might use that plant to manufacture only for his own personal use, and yet the court said it was not the natural right of a citizen of the United States to manufacture liquor for his own personal use. Now it seems to me that there is a good deal of light shed by this decision upon the question, also as to whether it is the natural right of a man to acquire intoxicating liquors by importation if Congress makes it possible for State jurisdiction to attach to such liquors when they come within the State.

The courts have held in all these cases, when the cases have come up (even when they were constrained to pass against the validity of the State laws), the courts have practically said that the object of local option under police powers may be impaired and rendered nugatory if liquors could be shipped in from the outside or if liquors could be manufactured in the State and exported into another State. This last was the exact point decided in the case of *Kidd against Pearson*, 128 U. S., and in the *Mugler* case, as I said, it was decided that a man could not manufacture intoxicating liquors even for his own personal use.

Mr. STERLING. Do you reconcile those cases with the case of *Vance against Vandercook*, or do you say they conflict at all.

Mr. DINWIDDIE. I do not think they conflict. I think the case of *Vance v. Vandercook* was decided in view of the court's holding in the *Rhodes* case. They held in the *Rhodes* case that under the language of the *Wilson* law the interstate commerce character of liquors did not cease until the goods had been delivered to the consignee, and yet the statute of South Carolina was attempting to attach to those liquors before delivery had been made to the consignee.

Mr. LITTLEFIELD. The case of *Vance against Vandercook* was a case where the liquors were to be delivered to a person for his personal use, and hence the use of the language in the decision in that case, "personal use."

Mr. DINWIDDIE. Yes; and they construed that in view of the previous decision in the *Rhodes* case.

Mr. LITTLEFIELD. If we passed this bill it would not be of any use unless the State prohibited the personal use of liquors.

Mr. DINWIDDIE. To make this Littlefield bill any good?

Mr. LITTLEFIELD. Yes; you would have to have a police regulation in the State.

Mr. DINWIDDIE. Yes; to attempt to do that.

Mr. LITTLEFIELD. Where is there any State that has any such regulation as that?

Mr. DINWIDDIE. There is none that I know of.

Mr. LITTLEFIELD. Then the next thing you would do would be to get the State to pass such a law as this to make this bill any good—as far as personal use goes, I mean?

Mr. DINWIDDIE. So far as the personal-use idea goes, yes; but that

leads me to another thing. It has been contended in some quarters that this personal-use amendment is necessary in order to make this statute, the Littlefield bill or this statute, if it is enacted into law, constitutional, and I want to say a word or two on that line.

Mr. LITTLEFIELD. That is an amendment restricting it as to personal use.

Mr. DINWIDDIE. Yes; an amendment prohibiting the State from interfering with liquors imported for personal use. Now that can not be. In the first place, it seems hardly necessary to refer to it in a committee that knows vastly more about the law than I do, but the point is this:

Grant, for the sake of argument, that it may be unconstitutional—which I do not believe—for a State, even after this bill is passed, to prohibit a man from importing liquor into his State for his own personal use; if a State attempts to do that after this bill is passed I submit to the committee it will not be this bill that is unconstitutional. It will be the State legislation that is passed by such a commonwealth after this bill passes. Is that not true? The very fact that this amendment is not on the Littlefield bill when it becomes a law will not make this at all repugnant to the Constitution of the United States, but if it is constitutional and it is an alienable right for a man in a State to import liquor for personal use from another State, I submit that it is the legislation by the State attempting to enact it which will fall as being repugnant to the Constitution of the United States.

Mr. LITTLEFIELD. That is to say this bill simply attempts to remove generally the interstate-commerce inhibition.

Mr. DINWIDDIE. Exactly.

Mr. LITTLEFIELD. And proceeds on the assumption that every State will exercise its legislative power in a constitutional manner?

Mr. DINWIDDIE. Yes.

Mr. LITTLEFIELD. And does not single out any feature of State legislation for permission or authorization?

Mr. DINWIDDIE. Not at all.

Mr. LITTLEFIELD. But is absolutely general in its character, and if the State does undertake to exercise unconstitutional powers the legislation of the State is what falls?

Mr. DINWIDDIE. Exactly so; isn't that correct?

Mr. LITTLEFIELD. I haven't any doubt about it.

Mr. DINWIDDIE. I haven't any doubt about it either.

Mr. PALMER. That settles it then.

Mr. BRANTLEY. If it would be unconstitutional for the State to prevent the importation of liquor for personal use or otherwise, what would you accomplish at all by the passage of this bill?

Mr. DINWIDDIE. Well, you have heard Judge Smith, you have heard Mr. Williams, of Mississippi, speak of the difficulties.

Mr. BRANTLEY. To eliminate your second section about C. O. D. deliveries and take your first section, what do you accomplish by that unless you could enable a State to prohibit the importation of liquor? It can now prevent the sale of liquor.

Mr. DINWIDDIE. After it gets to the consignee—

Mr. BRANTLEY. If you prevent the consignee from receiving it you prevent its importation, and is not that what you are seeking to do under the first section, or at least give the States authority to do that?

Mr. DINWIDDIE. I will answer your question in this way: What we

seek to do is to give to the States the right to let their lawful legislation attach to liquors upon their entrance into the State before and after delivery to the consignee.

Mr. BRANTLEY. I know that is the language——

Mr. DINWIDDIE. That would be the effect if it was passed——

Mr. BRANTLEY (continuing). But now what particular thing do you want the State to do?

Mr. DINWIDDIE. I want the State to have absolute plenary power, as they formerly had before the *Leisy v. Hardin* decision, to regulate the liquor traffic within their States in their own way.

Mr. BRANTLEY. Do you know of any power that a State would have upon the passage of this law that it has not now except the right to prevent the importation?

Mr. DINWIDDIE. I do not know that it has, and I am perfectly frank to say before the committee—I believe like Mr. Williams in being entirely frank—I do not know any reason why the States, if it can be constitutionally done and they want to do it, I do not know of a State to-day that attempts to do it, but I do not know of any reason why they should be prohibited from exercising that power if they choose to do it.

Mr. BRANTLEY. I was not discussing that, but I wanted you to be candid enough to tell us what you wanted the State to do under the proposition of the first section of the Littlefield bill, and if there is anything it could do then that it can not do now except to prevent the importation of liquor into the State.

Mr. LITTLEFIELD. What was your question?

Mr. BRANTLEY. My question was whether under the first section of the Littlefield bill there was any power conferred except the power to prohibit the importation of liquor?

Mr. LITTLEFIELD. Yes; I suppose that is true, that under the law as it stood after the *Leisy v. Hardin* case the sale in the original package was the essential feature of the importation proposition. I suppose that is true, is it not?

Mr. DINWIDDIE. There is no doubt about that. Now, the Wilson bill deprived the liquor of that essential attribute of interstate commerce; but State law can not attach to the liquor under the Wilson law, as interpreted in the *Rhodes* case, until the original package reaches the hands of the consignee; and when it has reached the hands of the consignee then the law operates, which it did not do before the Wilson law. Now, this bill, if passed, will subject the liquor to the State legislation as soon as it arrives within the geographical limits of the State. For instance, if it was intended for unlawful sale it could be seized before it reaches the consignee.

Mr. LITTLEFIELD. In other words, you could prevent it coming in?

Mr. DINWIDDIE. You can prevent it from coming in now for all legal purposes under the Wilson law when you deprive an interstate shipment of its essential attributes.

Mr. LITTLEFIELD. The Supreme Court called that an incident.

Mr. DINWIDDIE. You practically deprive the whole transaction of any interstate commerce value. This does go further, to be sure, and attaches to the original package the moment it reaches the geographical limits of the State.

Mr. STERLING. Then, as a matter of fact, the only thing that is accom-

plished by the bill is that you can this way reach liquor shipped in for personal use. You can reach all other cases at present.

Mr. LITTLEFIELD. No, I don't think so, for this reason: Suppose a man ships in a barrel of liquor, and has shipped it in to be delivered to a regular dealer in liquor. Under the Wilson law you would have to wait until that barrel of liquor reached the place of business of the man operating his saloon, for instance, and when it reached his place of business and was delivered to him then it would be subject to seizure and confiscation, and then he would be subject to prosecution under the law of the State for selling it or for keeping it with intent to sell. Now, if this bill becomes a law, you can reach that same barrel of liquor before it reaches the consignee.

Mr. STERLING. Is there any advantage in that?

Mr. LITTLEFIELD. Yes, a tremendous advantage. In my own State, speaking from my own practical experience, one of the most effective instruments in the enforcement of the prohibitory law in Maine is the power to seize the liquor when it reaches the railroad station or when it is in the hands of the carrier—that is, when it comes along and before it reaches the hands of the consignee. Of course, that can not be done, that is, legally done, to-day, but it is one of the most important features in the successful enforcement of the law in my State. Do I make myself clear?

Mr. STERLING. Yes, I see the point, but it goes this much farther than the suggestion I make. I have been considering the only thing gained by it would be that you could reach cases of liquor shipped in for personal use. By your explanation there is this much in addition: That they can seize the liquor sooner than they can under the Wilson law as it is now.

Mr. DINWIDDIE. Undoubtedly.

Mr. STERLING. So in effect the only thing you can do under this bill that you can not do under the Wilson law—I mean as to the practical operation of the liquor business in any State—is to cut out the right of a person shipping it in for personal use.

Mr. LITTLEFIELD. In addition to the element of seizure.

Mr. PALMER. You could not cut out that right in any State up to that point; you would have to get some more legislation.

Mr. STERLING. I see the point you make, Mr. Littlefield; that goes simply to being able to put into practical effect the laws of the State, whatever they may be.

Mr. DINWIDDIE. Before the State loses sight of the liquor.

Mr. STERLING. It makes it more efficient.

Mr. LITTLEFIELD. Yes.

Mr. DINWIDDIE. I may say in this connection two things. In the first place I want to repudiate a suggestion made here from time to time by anybody that has spoken against this measure, and that is that we are coming up here and asking Congress to help us enforce our State legislation. Now that is absolutely not true.

Mr. STERLING. Does not that go right to that question; does not the suggestion, the point Mr. Littlefield makes of simply enabling the States to enforce their local laws, go to that point?

Mr. DINWIDDIE. I say the legislation is not to help them. We are simply asking Congress to remove a bar to the successful enforcement of our legislation, and after Congress removes the impediment it is up

to us to enforce our legislation or take the evil consequences of non-enforcement. But the very fact—and I want to answer the statement made on the other side—the very fact that we are here asking for this legislation, the very fact, as has been said of many States, that we have tried and have succeeded in convicting men for violation of State statutes on the liquor question in these various States, and then find ourselves unable to secure permanent conviction of those men when they plead interstate commerce, shows that the States are actually enforcing their legislation upon this subject, and that they are not wholly dilatory.

I do not mean to say that there are not exceptions, but I mean to say that as a general thing the States are not “laying down” on the job and asking Congress to do something for them which they refuse or fail to do themselves.

MR. SMITH, of Kentucky. Is not this bill tantamount to a bill removing liquors from interstate commerce—that is, declaring that they shall not constitute articles of interstate commerce; is not that the substantial effect of this?

MR. DINWIDDIE. I will tell you, Mr. Smith, if you will permit me. If I have 140 U. S., I will tell you. I do not think anybody can employ language that is more apt and goes more directly to the heart of the matter than Chief Justice Fuller himself employed in *re Rahrer* case, when he decided the constitutionality of the Wilson law, and then goes just one step farther. He says:

No reason is perceived why, if Congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competency to do so.

Mr. Littlefield was right a moment ago when he said—and I could go from *Brown v. Maryland*, the great controlling case which was decided by Chief Justice Marshall in 1827, with reference to the right of an importer to sell the imported article in the original unbroken package, without any State interference, from that time down. Chief Justice Marshall held in the leading case of *Brown against Maryland*, and it has been reiterated all through these years by the courts, that the sale of an imported article was an essential part of interstate commerce and that the right to sell an imported article was an inseparable accessory of the right to import.

MR. LITTLEFIELD. That is, it was interstate commerce.

MR. DINWIDDIE. That is, it was interstate commerce and the States could not interfere with it, and that was held clear up and in fact furnished the basis for the judgment of the court in the *Leisy v. Hardin* case. That was the gist of the *Leisy v. Hardin* case—that a man could import under the decision of the *Bowman v. Chicago and Northwestern Railroad* case and then they went farther and said if the man could import a package of liquor from another State he had the necessary accessory right, essential right, the court held and stated, to sell it in the original package, and that was the very point decided in the *Leisy* case.

Now, then, the court held that Congress by the Wilson law divested interstate commerce in shipments of liquor of that important element of sale, and our simple contention is that under the statement which Chief Justice Fuller made in delivering that opinion, which decided the constitutionality of the Wilson law, if Congress can divest an im-

ported package of an essential element that had always been recognized as such it can go further and divest it of its interstate commerce character after it crosses the State line.

Mr. SMITH. It would not be interstate commerce at all then?

Mr. DINWIDDIE. Exactly not, because it is then made a domestic product, and this is exactly what is done here.

Mr. BRANTLEY. The question I wanted to ask you is this: If that line of reasoning is true could not Congress divest the article of its interstate commerce character at the place it was offered for shipment, although it was merchandise offered for interstate shipment, and the state would assume the regulation of what was actually interstate commerce; where would you draw the line?

Mr. DINWIDDIE. Oh, no; I will answer that this way very readily: because a State can not exercise extra territorial jurisdiction. A law of the State of Ohio can not operate in the State of Pennsylvania, but Congress, in my judgment, according to this decision—and there has been no pronouncement in any other case that changes that decision of the court or gives color to the idea that such an act would not be declared constitutional—the Congress can divest it at an earlier period of time than ordinarily. What has been the rule all through the years as to when interstate commerce in an article ceased? Not at the delivery to the consignee, the court held right along—

Mr. LITTLEFIELD. You mean prior to the Wilson law—

Mr. DINWIDDIE. I am speaking of interstate commerce generally, Mr. Littlefield, not when it was delivered to the consignee, but when the importer had so acted upon the imported article that it had become commingled with the mass of property in the State. I know that statement has been ridiculed by some of the justices of the Supreme Court bench, but there must have been a time—and they have always held that from the first sale by the importer or some other action by him has made it clear that it was then a part of the mass of property within the State, and up to that time the States could not interfere.

Now, with reference to intoxicating liquor, it was so decided in the Leisy case, that the State could not interfere until after sale by the importer of the original package, but Congress came in by the Wilson law and divested intoxicating liquor of its interstate character, made it a class by itself, and divested it of its interstate-commerce character so far as to enable State jurisdiction to attach after delivery to the consignee, and so as to prevent sale.

Mr. LITTLEFIELD. So far as the consignee is concerned it practically destroyed it.

Mr. DINWIDDIE. Yes.

Mr. STERLING. Do you think if a man should under this law personally take a bottle of liquor in his pocket or valise into a prohibition State that the State could by a law seize that bottle of liquor?

Mr. LITTLEFIELD. They have such a law in the State of Iowa right now.

Mr. DINWIDDIE. Well, it would subject liquor coming within the State—

Mr. LITTLEFIELD. They go that far in Kansas.

Mr. DINWIDDIE. I was interrupted a little while ago when I was going on to make this admission. Now, what is the object of all anti-saloon legislation, regulation, prohibition, dispensary? On its face it can not be defended on any other ground than that it is to decrease

the consumption of intoxicating liquors. If that is the case why don't the States pass legislation directly prohibiting people from using intoxicating liquors? Why, you could not enforce that legislation because you could not prove people guilty of violating the law as you can prove them guilty of violating laws against selling intoxicating liquors.

In Ohio we are not a prohibition State, but we have a good deal of local-option territory in the State, and that legislation is aimed at the decrease of the consumption of intoxicating liquors. And why don't we go at it directly? You could not prove one out of a hundred cases if the law were directed against the drinking of intoxicating liquors. We get at it by trying to reduce the sales. I have not the slightest hesitancy in admitting that the object would be the same, and it is the same. Now, then, what is the practical effect? You raise the question of what is the practical effect in regard to the importation of liquor for personal use after this bill becomes a law. Take, for instance, Maine or Kansas or North Dakota. Liquor is consigned to a man in the State of Maine (which State does not forbid the personal use of liquor); it would simply be delivered to that consignee and unless the authorities in the State of Maine had reason to believe he was importing it for unlawful use. Is that not so?

Mr. LITTLEFIELD. To-day a man may have a wagon load of liquor shipped to him and if it is seized it is practically impossible to convict him if he claims it is for his personal use. There is no law in my State to-day that undertakes to prevent a man from purchasing liquor for his own personal use, and there has never been any suggestion of legislation of that kind, I may say.

Mr. DINWIDDIE. This bears on this point:

It is competent for Congress under the grant of power to regulate commerce among the States to determine when a subject of that commerce shall become amenable to the law of the State in which the transit ends.

That is 43d Federal Reporter, 763. That is in direct harmony with the pronouncement of the Supreme Court in *re Rahrer*, in 140 U. S., and has never been overruled.

May I call the attention of the committee to the fact that we already have a statute of this kind which has been passed on and held constitutional.

I have here the Revised Statutes. I call attention to section 4280. I would also direct attention to 4278 and 4279. These sections refer to the transportation of nitroglycerin and similar products under the acts of Congress. It tells how they shall be boxed and shipped, and so on—4278 and 4279; but now, coming to 4280, it reads:

The two preceding sections shall not be so construed as to prevent any State, Territory, district, city, or town within the United States from regulating or prohibiting the traffic in or transportation of those substances between persons or places lying or being wholly within their respective territorial limits, or from prohibiting the introduction thereof into such limits for sale, use, or consumption therein.

Mr. PALMER. Under that law if a town happened to be situated on the line of a railroad, they could stop dynamite or nitroglycerin from being carried through the town.

Mr. BRANTLEY. Do you put liquor in the same class with diseased cattle and nitroglycerin?

Mr. DINWIDDIE. Not diseased cattle; diseased cattle are not articles

of commerce. It has always been competent for a State to destroy and prohibit the sale of diseased cattle.

Mr. BRANTLEY. Does the Congress levy a tax upon dealers in nitro-glycerin?

Mr. DINWIDDIE. In the States?

Mr. BRANTLEY. Does the United States recognize dealing in nitro-glycerin as a legitimate article of commerce, and tax the dealers?

Mr. DINWIDDIE. I do not see that that has any bearing, but I would answer yes as to the first part of your question; I think not as to the tax.

Mr. BRANTLEY. It recognizes it as an article that might be productive of loss of life by explosion.

Mr. DINWIDDIE. It is recognized as an article of commerce, and the means for transporting it are provided by that act of Congress.

Mr. BIRDSALL. I suppose that would be upon the theory that there is danger in the transportation itself?

Mr. DINWIDDIE. Yes, certainly; but as to the question of whether they tax it, I do not see that that has any bearing because the Federal tax on liquors has always been construed not to be a license to sell, and to confer no authority.

Mr. BRANTLEY. But it is a recognition that whisky is a legitimate article of commerce.

Mr. DINWIDDIE. I do not see that; it is simply a revenue measure.

Mr. SMITH, of Kentucky. But Congress would not tax anything as a revenue producer that was not a legitimate article of commerce.

Mr. LITTLEFIELD. It taxed national-bank currency out of existence on the ground it was not legitimate.

Mr. SMITH. That was not for revenue.

Mr. LITTLEFIELD. But it was exercising that power.

Mr. SMITH. It was a very false application of the power, though.

Mr. LITTLEFIELD. I agree with you. But the statute says that the tax on liquors shall not authorize the sale of the liquor anywhere. The tax on its face has the express statement that it does not license them to sell.

Mr. SMITH. I understand it has no power in reality to license.

Mr. LITTLEFIELD. Not only has no power, but it does not undertake to do so.

Mr. SMITH. I understand, but it is a recognition of the business as a legitimate business.

Mr. LITTLEFIELD. Nobody sells it without a Government tax receipt, because he has to pay that tax, but the Government recognizes it as a traffic that can more probably bear the burden the Government places on it, and so that is the reason it is differentiated, for instance, from a barrel of flour, which the Government would also have a right to tax.

Mr. DINWIDDIE. I have some further extracts from the case of *in re Rahrer*, in which I think the court absolutely pointed to the legitimacy and constitutionality of this character of legislation by Congress, and the decision of the Supreme Court in the *Champion Lottery* case, which goes to the very point raised by Mr. Palmer a little while ago with reference to whether the right to regulate interstate commerce carried with it the right to prohibit, but I do not care to inflict very much more upon the committee, and I would simply like to call attention to those decisions. Justice Harlan in that *Champion Lottery*

case went so far as to show by a direct reference to three or four or five statutes of the United States that the power of the Congress under its delegated authority to regulate commerce had been invoked time and time again to prohibit interstate commerce.

Mr. PALMER. Where is that case?

Mr. DINWIDDIE. That is reported in 188 U. S.; the title of the case is *Champion v. Ames*, page 321.

The CHAIRMAN. The court in that case stated that he expressly limited the doctrine of that case to the particular facts in the case before him.

Mr. DINWIDDIE. Yes, and I do not know of any case before the Supreme Court in which that has not practically been done. In nearly all of these intoxicating liquor cases the court has said that, and particularly with reference to this conflict between State authority and Federal authority. All these cases are individual cases, and are decided under the law and Constitution upon the facts in each particular case.

Mr. LITTLEFIELD. I was going to suggest—I think you have probably very fully covered the general propositions—would it answer your purpose if you would file an additional statement and have it printed in the Record?

The CHAIRMAN. Somebody suggested you be allowed a month. Would you prefer that?

Mr. DINWIDDIE. No, I would not. I prefer action by the committee in connection with this legislation. I do not want to lug in a lot of extraneous and improper matter, but inasmuch as some things have been adverted to by the opponents of the measure, I want in connection with the legal argument which I shall prepare, with your courtesy, as Mr. Littlefield suggests, to incorporate rather brief statements along one or two other lines, not because they belong here so much, but because our German-American friends have put in so much that really does not belong before this committee, and yet which might have an influence, that I think some of those statements ought to be met. In the first place, the action of life insurance companies concerning the temperance or total abstinence habits of their insured and prospective insurers; the statement was made that the census of the United States showed that men that drank were better risks for insurance companies—

Mr. LITTLEFIELD. I can tell them one company that does not act on that hypothesis; that is the Equitable of New York.

Mr. DINWIDDIE. Some statements were made with reference to the ill effects of the Sunday closing in St. Louis, which has become rather famous. I have statistics showing that there has been a marked diminution of crime because of the Sunday closing. I would like to incorporate that and one or two other similar facts that bear directly on the remarks that have been made before the committee if you will allow me that privilege.

The CHAIRMAN. Yes.

Mr. DINWIDDIE. I was entirely willing to be subjected to the questionings of the committee, although it necessarily interfered somewhat with the continuity of my argument. I desire to call attention to the fact that it was the specific language which Congress employed in the Wilson law, under which the Supreme Court was constrained to hold that the State laws did not attach to liquors imported from other

States until after their delivery to the consignee. I have already cited the exact language employed by the court in rendering that decision. In the same connection I call attention to the fact that when the general power of Congress to pass such a law subjecting a class of merchandise to the jurisdiction of State laws upon their arrival within the State was before the court, in the case of *in re Rahrer*, the validity of the statute was upheld by an undivided court, and in answer to some of the Constitutional objections which have been urged against this proposed legislation I shall call attention to the very definite and clear and, it seems to me, conclusive statements of Chief Justice Fuller in delivering the latter decision.

I shall now advert to the various objections that have been raised to the Littlefield bill and the Hepburn-Dolliver bill of which it is the successor. So nearly as they can be put in definite form, the supposed constitutional objections to this measure are the following: First, that the passage of the law would give extraterritorial effect to such legislation of the States as sought to bring within their jurisdiction imported original packages before their delivery to the consignee; second, that the passage of the bill would be tantamount to a delegation of power vested solely in Congress by the Constitution—to “regulate commerce among the several States;” third, that the passage of the bill, together with the operations of State laws designed to act on interstate shipment of liquors, would amount to concurrent legislation by the Federal Government and the several States upon a subject the control of which, by the terms of the Constitution, was granted exclusively to Congress; fourth, that the power of Congress to regulate interstate commerce does not include the power to prohibit; fifth, that the right to import intoxicating liquors from another State for the personal use of the consignee is a right secured by the Constitution of the United States and incapable of being destroyed by legislation.

No clearer nor more conclusive answer to the first two propositions, as well as to the third by necessary implication, is possible than the opinion of the Supreme Court in the *Rahrer* case (140 U. S., 561-564) as handed down by Chief Justice Fuller, and from which I quote verbatim:

By the adoption of the Constitution the ability of the several States to act upon the matter solely in accordance with their own will was extinguished, and the legislative will of the General Government substituted. No affirmative guaranty was thereby given to any State of the right to demand as between it and the others what it could not have obtained before, while the object was undoubtedly sought to be obtained of preventing commercial regulations partial in their character or contrary to the common interests. And the magnificent growth and prosperity of the country attest the success which has attended the accomplishment of that object. But this furnishes no support to the position that Congress could not, in the exercise of the discretion reposed in it, concluding that the common interests did not require entire freedom in the traffic in ardent spirits, enact the law in question. In so doing Congress has not attempted to delegate the power to regulate commerce, or to exercise any power reserved to the States, or to grant a power not possessed by the States, or to adopt State laws. It has taken its own course and made its own regulation, applying to these subjects of interstate commerce one common rule, whose uniformity is not affected by variations in State laws in dealing with such property.

The principle upon which local-option laws, so called, have been sustained is that while the legislature can not delegate its power to make a law, it can make a law which leaves it to municipalities or the people to determine some fact or state of things upon which the action of the law may depend; but we do not rest the validity of the act of Congress on this analogy. The power over interstate commerce is too vital to the integrity of the nation to be qualified by any refinement of reasoning. The power to regulate is solely in the General Government, and it is an essential

part of that regulation to prescribe the regular means for accomplishing the introduction and incorporation of articles into and with the mass of property in the country or State. (12 Wheat., 448.)

No reason is perceived why, if Congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competency to do so.

The differences of opinion which have existed in this tribunal in many leading cases upon this subject have arisen, not from a denial of the power of Congress, when exercised, but upon the question whether the inaction of Congress was in itself equivalent to the affirmative interposition of a bar to the operation of an undisputed power possessed by the States.

We recall no decision giving color to the idea that when Congress acted its action would be less potent than when it kept silent.

The framers of the Constitution never intended that the legislative power of the nation shall find itself incapable of disposing of a subject-matter specifically committed to its charge.

* * * * *

Congress did not use terms of permission to the State to act, but simply removed an impediment to the enforcement of the State laws in respect to imported packages in their original condition, created by the absence of a specific utterance on its part. It imparted no power to the State not then possessed, but allowed imported property to fall at once upon arrival within the local jurisdiction.

* * * * *

This is not the case of a law enacted in the unauthorized exercise of a power exclusively confided to Congress, but of a law which it was competent for the State to pass, but which could not operate upon articles occupying a certain situation until the passage of the act of Congress.

That act in terms removed the obstacle, and we perceive no adequate ground for adjudging that a reenactment of the State law was required before it can have the effect upon imported which it had always had upon domestic property.

Jurisdiction attached, not in virtue of the law of Congress, but because the effect of the latter was to place the property where jurisdiction could attach.

The opponents of this measure claim what its advocates freely admit and what every lawyer knows, and of which even laymen like myself are cognizant, that Congress can not delegate its own powers nor enlarge those of a State, nor give to State laws extraterritorial jurisdiction. None of these things are attempted by the bill under consideration. The effect, as the Chief Justice has so well said, will be "simply to remove an impediment to the enforcement of the State laws in respect to imported packages in their original condition created by the absence of a specific utterance" on the part of Congress, and thus place the imported property in such a position that State jurisdiction can attach.

Were the quotation from the opinion in the *Rahrer* case just cited not a sufficient answer to the objections just referred to, ample precedent is found in numerous other exercises of exclusive power similarly vested in Congress by the Constitution, as, for example, in the act approved August 17, 1789.

It has been said that the act of August 7, 1789, acknowledges a concurrent power in the States to regulate the conduct of pilots, and hence is inferred an admission of their concurrent right with Congress to regulate commerce with foreign nations and among the States. But this inference is not, we think, justified by the fact. Although Congress can not enable a State to legislate, Congress may adopt the provisions of a State on any subject. When the Government was brought into existence it found a system for the regulation of its pilots in force in every State. The act which has been mentioned adopts this system and gives it the same validity as if its provisions had been specially made by Congress. But the act, it may be said, is prospective also, and the adoption of laws to be made in the future presupposes the right in the maker to legislate on the subject. The acknowledged power of a State to regulate its police, its domestic trade, and to govern its own citizens may enable it to legislate on the subject to a considerable extent; and the adoption of its system by Congress,

and the application of it to the whole subject of commerce does not seem to the court to imply a right in the States to apply it of their own authority. But the adoption of the State system being temporary, being only until further legislative provision shall be made by Congress, shows conclusively an opinion that Congress could control the whole subject, and might adopt the system of the States or provide one of its own.

The States have absolutely plenary power over their purely internal affairs. At the same time, under the Constitution and decisions of the Supreme Court, they are absolutely interdicted from interference with interstate commerce. On the other hand, Congress, while it can neither authorize nor forbid nor otherwise regulate the purely internal commerce of a State, has absolutely plenary power over interstate commerce. This includes the regulation of the subjects and means of interstate commerce, as will be universally conceded. And it also embraces the power to determine when articles of interstate commerce shall be divested of that character and become subject to the laws of the States; or, in other words, to use the language of in re *Vliet*, 43 Fed. Rept., 763: "To determine when a subject of that commerce shall become amenable to the law of the State in which the transit ends." This decision has never been overruled, and, in fact, the decision in the *Rahrer* case was a conclusive affirmance of the doctrine in the case of *Vliet*, just quoted.

Even a cursory examination of the leading interstate-commerce cases—*Gibbons v. Ogden* (9 Wheaton, 1) and *Brown v. Maryland* (12 Wheaton, 419), as well as later cases—shows conclusively that the power of Congress to regulate interstate and foreign commerce is plenary, and that Congress itself is the sole judge as to the manner in which it shall be exercised, subject only to the actual prohibitions that are placed upon it by the Constitution of the United States, and there are no such prohibitions so far as this bill is concerned. The following quotation bearing on this specific point is from the celebrated opinion of Chief Justice Marshall in the case of *Gibbons v. Ogden*:

Congress shall have power to regulate commerce among the several States and with foreign nations and with the Indian tribes. The subject to be regulated is commerce, and our Constitution being, as so ably said at the bar, one of enumeration and not of definition, to ascertain the extent of the power it becomes necessary to settle the meaning of the word. The counsel for the appellee would limit it to traffic, to buying and selling, or the interchange of commodities, and do not admit that it comprehends navigation. This would restrict a general term applicable to many objects to one of its significations. Commerce undoubtedly is traffic, but it is something more—it is intercourse. It describes the commercial intercourse between nations and parts of nations in all its branches, and is regulated by prescribing rules for carrying on that intercourse.

We are now arrived at the inquiry, What is this power? It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than those that are prescribed in the Constitution.

These are expressed in plain terms and do not affect the questions which arise in this case or which have been discussed at the bar. If, as has been always understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States.

The wisdom and the discretion of Congress, their identity with people, and the influence their constituents possess at elections are in this, as in many other instances—as, for example, in declaring war—the sole restrictions on which they have relied to secure them from its abuse. They are the restrictions on which the people must often rely solely in all representative governments.

In this direct connection it may be well to repeat a doctrine frequently announced by the Supreme Court, which was originally laid down in the *Gibbons v. Ogden* case, known and quoted as the leading interstate-commerce case, decided by Chief Justice Marshall, wherein it has been held that "the power to regulate interstate and foreign commerce is full, complete, and absolute in Congress, subject to no limitations other than are prescribed by the Constitution." There are no limitations in the Constitution that forbid Congress to pass a law divesting articles, to use the language of the Supreme Court itself, of their interstate-commerce character "at an earlier period of time than would otherwise be the case." But in order to dispel all doubt upon this subject I refer to a very recent decision of the Supreme Court in the *Champion Lottery* case, which was known as *Champion v. Ames*, and reported in 188 U. S., 321.

That regulation may sometimes take the form or have the effect of prohibition is also illustrated in the case of *In re Rahrer* (140 U. S., 545). In *Mugler v. Kansas* (123 U. S., 623) it was adjudged that State legislation prohibiting the manufacture of spirituous, malt, vinous, fermented, or other intoxicating liquors within the limits of the State, to be there sold or bartered for general use as a beverage, does not necessarily infringe any right, privilege, or immunity secured by the Constitution of the United States or by the amendments thereto. Subsequently, in *Bowman v. Chicago, etc., Railway Company* (125 U. S., 465), this court held that ardent spirits, distilled liquors, ale, and beer were subjects of exchange, barter, and traffic, and were so recognized by the usages of the commercial world, as well as by the laws of Congress and the decisions of the courts. In *Leisy v. Hardin* (135 U. S., 100) the court again held that spirituous liquors were recognized articles of commerce, and declared a statute of Iowa prohibiting the sale within its limits of any intoxicating liquors, except for pharmaceutical, medicinal, chemical, or sacramental purposes, under a State license, to be repugnant to the commerce clause of the Constitution, if applied to the sale within the State by the importer, in the original unbroken packages of such liquors manufactured in and brought from another State.

And in determining that case the court said that "whether a State could prohibit the sale within its limits, in original, unbroken packages, of ardent spirits, distilled liquors, ale, and beer imported from another State, this court said that they were recognized by the laws of Congress as well as by the commercial world 'as subjects of exchange, barter, and traffic,' and that whatever our individual views may be as to the deleterious or dangerous qualities of particular articles, we can not hold that any articles which Congress recognized as subjects of commerce are not such." (*Leisy v. Hardin*, 135 U. S., 100, 110, 125.)

Then followed the passage by Congress of the act of August 8, 1890 (26 Stat., 313, c. 728), providing "that all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale, or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise." That act was sustained in the *Rahrer* case as a valid exercise of the power of Congress to regulate commerce among the States.

In *Rhodes v. Iowa* (170 U. S., 412, 426), that statute—all of its provisions being regarded—was held as not causing the power of the State to attach to an interstate-commerce shipment of intoxicating liquors "while the merchandise was in transit under such shipment and until its arrival at the point of destination and delivery there to the consignee."

Thus under its power to regulate interstate commerce, as involved in the transportation, in original packages, of ardent spirits from one State to another, Congress, by the necessary effect of the act of 1890, made it impossible to transport such packages to places within a prohibitory State and there dispose of their contents by sale, although it had been previously held that ardent spirits were recognized articles of commerce, and, until Congress otherwise provided, could be imported into a State and sold in the original packages despite the will of the State. If at the time of the passage of the act of 1890 all the States had enacted liquor laws prohibiting the sale of intoxicating liquors within their respective limits, then the act would have had

the necessary effect to exclude ardent spirits altogether from commerce among the States, for no one would ship, for purposes of sale, packages containing such spirits to points within any State that forbade their sale at any time or place, even in unbroken packages, and, in addition, provided for the seizure and forfeiture of such packages. So that we have in the *Rahrer* case a recognition of the principle that the power of Congress to regulate interstate commerce may sometimes be exerted with the effect of excluding particular articles from such commerce.

But there is a further confirmation of our proposition that it is competent for Congress to pass the Littlefield bill now under consideration. Sections 4278, 4279, and 4280, United States Revised Statutes, refer to the transportation of nitroglycerin and other similar substances by the agents of interstate commerce. The first two sections prescribe the manner of the transportation required by the Federal statute. Section 4280 specifically provides that—

The two preceding sections shall not be so construed as to prevent any State, Territory, district, city, or town within the United States from regulating or from prohibiting the traffic in or transportation of those substances, between persons or places lying or being within their respective territorial limits, or from prohibiting the introduction thereof into such limits, for sale, use, or consumption therein. (Act July 3, 1866, c. 162, par. 5, 14 Stat., 82.)

Being unable to overcome the force and direct application to the bill under consideration of the doctrine that the power of Congress is plenary and that it can regulate interstate and foreign commerce according to its discretion, subject only to such limitations as are found in the Constitution itself, some of the opponents of this bill admit the accurateness of that statement, but insist that the Littlefield bill proposes not a regulation of interstate commerce by Congress, but abandonment of it to the States. This can not be conceded. Some of the cases which I have heretofore cited, and particularly the decision in *re Rahrer*, are directed specifically to this point. I earnestly call attention again to the paragraph of Chief Justice Fuller's decision affirming the constitutionality of the Wilson law, in which he emphatically disposes of the contention of the appellant in that case that this was a delegation to the States of power to regulate interstate commerce:

Congress did not use terms of permission to the State to act, but simply removed an impediment to the enforcement of the State laws in respect to imported packages in their original condition, created by the absence of a specific utterance on its part. It imparted no power to the State not then possessed, but allowed imported property to fall at once upon arrival within the local jurisdiction.

I now come to the objection which is urged against the pending bill in which its opponents claim that the Wilson law goes as far as it is competent for Congress to go in the matter of subjecting intoxicating liquors imported from one State into another to the jurisdiction of the State into which they are shipped. In other words, it is contended that the right to import intoxicating liquors for one's personal use is a right derived from the Constitution of the United States which can not be impaired or destroyed by legislation.

It is conceded by those who make this claim that they think they find their authority for this doctrine in the decision of the Supreme Court in the case of *Vance v. Vandercook*, reported in 170 U. S., 438:

But the right of persons in one State to ship liquors into another State to a resident for his own use is derived from the Constitution of the United States, and does not rest on the grant of State law.

I call attention, in this connection, to the fact that from the case of *Brown v. Maryland* clear down to and including the original-package

case of *Leisy v. Hardin*, it was specifically stated by the Supreme Court that an importer of interstate or foreign packages of merchandise had the constitutional right not only to import such merchandise untrammelled by State regulations or prohibitions, but that he also had the constitutional right to sell such imported merchandise in the original unbroken packages.

In the *Leisy v. Hardin* case it was repeatedly held, and in fact the crux of the decision was that a man had the constitutional right to sell imported liquors in the original unbroken package, State regulations to the contrary notwithstanding. By the passage of the Wilson law Congress divested such imported packages of their interstate commerce character upon their arrival within the State, and the law was held to be constitutional. When, however, the exact language of the law was before the court for its interpretation, it was held that the words employed did not permit State jurisdiction to attach until after delivery to the consignee. This interpretation defeated a part of the intention of Congress and the people, but was occasioned by faulty terminology. But it is contended on the other side that, while Congress might deprive an importer of the right to sell the merchandise in the original unbroken package, this is but an incident of the interstate commerce transaction, and it is not competent for Congress to pass any regulation which would interfere with the delivery of such merchandise to the consignee.

Were I not confident that every member of this committee is familiar with the language employed in numerous interstate commerce cases bearing directly upon the inseparability of the right of sale from the right of importation under State regulations or prohibitions, I would mass an array of citations from *Brown v. Maryland* down covering that specific point. I have stated that under the power of Congress it was competent for it to prescribe the manner in which imported articles should become "commingled with the mass of property within the State." Down to the passage of the Wilson law, imported intoxicating liquors were held not to have become commingled with the mass of property within the State, and therefore subject to State jurisdiction, until after their delivery to the consignee and the first sale by him in the original unbroken package.

By the passage of the Wilson law, as interpreted by the Supreme Court in the *Rhodes v. Iowa* case, Congress set forward the time when State jurisdiction could attach, by divesting intoxicating liquors of their interstate-commerce character after their arrival in the State and before sale. Our contention is that under its plenary powers Congress can still further set forward this period of time and subject intoxicating liquors to the jurisdiction of the State into which they are shipped upon their arrival within the State, both before and after delivery. Now, in view of all these facts, the decision of the Supreme Court in the *Vance v. Vandercook* case is readily understood. They had held in the *Rhodes* case that, under the language of the Wilson law, Congress did not submit imported intoxicating liquors to the jurisdiction of the State into which they were shipped until after they were delivered to the consignee.

The specific point at issue in the *Vance v. Vandercook* case was the right of a person to import liquors from another State for his own personal use. The court held, as above quoted, that this right was derived from the Constitution of the United States and did not rest on

the grant of State law. There is nothing in that language, even if it were not the supreme law of the land, which we feel disposed to controvert, nor is there anything discomfiting to us in our endeavor to secure the passage of this bill except in so far as members may be misled by misinterpreting the doctrine which we believe it affirms. Such a right we concede does not rest on the grant of the State law. Such a right we concede is derived by implication from the Constitution of the United States, and we contend that if so it must be under some article or section of that instrument.

There is no such article or section to which the opponents of this measure can point except the eighth section of article one, which delegates to Congress power to regulate commerce with foreign nations, among the several States, and with the Indian tribes. There is no suggestion in this section of an inalienable right to import intoxicating liquors for one's personal use which Congress, under its plenary power to regulate interstate commerce, can not directly control or regulate or prohibit. This contention of ours against the inalienability of such a right is given additional color by the decision in the *Mugler v. Kansas* case, wherein the court held that the right to manufacture intoxicating liquors for one's personal use was not an inalienable right and could be abridged by legislation, and property used for such unlawful manufacture could be confiscated. In *Kidd v. Pearson* it was held that a citizen had no right to manufacture intoxicating liquors contrary to the laws of his commonwealth even when such liquors were intended solely for exportation without the State. The Supreme Court has further held, in the *Crowley v. Christensen* and other cases, that the right to sell intoxicating liquors, so far as such a right exists, does not inhere in a citizen of a State or of the United States.

I have carefully sought information on this point, and I know of no State that directly attempts to forbid the personal use of intoxicating liquors. During the course of the previous questioning by members of the committee, I hurriedly adverted to the reason for this. It must be confessed all round that all this legislation which is directed against the manufacture and sale of intoxicating liquors is intended to minimize their use and the evils that are known to flow therefrom, and of which even the Supreme Court itself has repeatedly taken cognizance. It is asked, then, why not limit the operations of this proposed bill so that liquor intended for personal use shall be exempt. The reason for this is that we believe that the States which know their conditions and their needs, and are best able to provide for the safety, health, and morals of their people, ought to have absolute and untrammelled control of this subject-matter, and it is due from Congress to cooperate to that end and thus furnish what Mr. Justice Johnson called, in his concurrent opinion in the *Gibsons v. Ogden* case, "a frank and candid cooperation for the general good."

We therefore earnestly urge the committee favorably to recommend this bill in its present form without qualifying amendment, as we believe that all the interests of their citizens will be safe in the hands of the various States in the Union. I trust that the members of this committee are not to be swayed by the threats that have been made by the opponents of this measure, when dire vengeance at the polls has been suggested as the price of friendliness to this bill, for, without entering into detail, I may say that if the opposition proposes

to take that tack it may be that they shall drive the proponents of this measure, if their prayer is granted, to take active steps to preserve harmless the men who supported this fair and reasonable contention of the States for control of this important subject so vital to their welfare.

In this connection I need only say in passing that recent experiences in Ohio and some other States in the Union, where our forces have been mobilizing and have been trained in the duties of good citizenship, give some color to our statement that we think we shall be able effectively to stand by the men who do right and do not ignore the earnest and reasonable plea of the States for redress along this line.

During the course of the hearing, the opponents of this measure stated that the census of the United States showed that men who drank were better risks for life insurance companies than those who do not, and, as proof of the falseness of this statement, I submit the following testimony from various companies:

Below we give the opinions of various insurance companies as to the superiority of total abstinence risks.

Question. As a rule, other things being equal, do you consider the habitual user of intoxicating beverages as good an insurance "risk" as the total abstainer? If not, why not?

Company.	Answer.
Ætna Life	No. Drink diseases the system and shortens life.
Alpha Life	No. Drink ruins health.
American Legion of Honor	No. Statistics show them not equal risks.
Bankers' Life	No; for habit is liable to grow.
Berkshire Life	No. Drink destructive to health.
Brooklyn Life	No.
Chenango Mutual Benefit	No. More dangerous in acute diseases.
Citizens' Mutual Life	No. Abstainers most desirable.
Covenant Mutual Life	Excessive use injures system and shortens life.
Dominion Life	No. Weakens constitution to resist disease.
Equal Rights Life Association	No.
Equitable Mutual Life and Endowment Association	No. Drink impairs vitality; less likely to throw off disease.
Fidelity Mutual Life Association	No. Less vitality and recuperative powers.
Hartford Life	No. Moderate use lays foundation for disease.
Home Friendly Society	No. Because of far greater death rate.
Knights of the Maccabees	No. Drink tends to destroy life.
Knights Templar and Masons Life Indemnity	No. Drink lessens ability to overcome disease.
Knights Templar and Masonic Mutual Aid Association	No. Total abstainer the better risk.
Manhattan Life	Depends on quantity used.
Manufacturers' Temperance and General Life	No. Experience shows longevity of abstainers greater.
Masonic Life Association of Western New York	No. Twenty-two years' experience shows them short-lived.
Massachusetts Mutual Life	No. Drink causes organic changes. Reduces expectation of life nearly two-thirds.
Michigan Mutual	No. Drink dangerous to health and longevity.
Mutual Life	No.
New York Life	No.
Odd Fellows' Mutual Benefit Society	No.
Order of Scottish Clans	No. More liable to colds, bronchial troubles, etc.
Pacific Mutual Life	No. Predisposes to disease.
Protective Life Association	No. Drink lessens powers to resist disease.
Provident Savings Life Assurance Society	No. Drink cuts short life expectation.
Provincial Provident Institution	No. Less resistance to disease and more liable to accident.
Register Life and Annuity	No.
Royal Templars of Temperance	No. Death rate much lower among abstainers.
Royal Union Mutual Life	No. Apt to exceed "Anstie's limit."
Security Mutual Life	No. Drink shortens life.
Sun Life Assurance	No. Drink injures constitution. Habit apt to grow.
Union Central Life	No. Use tends to shorten life.
Union Life	No.
Union Mutual Life	No. More likely to drink to excess.
United States	No. Use affects heart, stomach, liver, and kidneys.
Washington Life	Depends on age and amount used.

During the hearing some statements were also made by the opponents of this measure, concerning the ill effects of the Sunday closing law in Missouri. In refutation of these statements I present the following statistics from Missouri, showing the diminution of crime and other good results of the Sunday closing law:

Sunday closing decreases Sabbath crime 40 per cent—Police figures from five cities show saving in criminal costs of \$27,000 in one year—Arrests for all misdemeanors and felonies less in 1905 than in preceding years—St. Louis's financial gain by putting lid on saloons amounted to \$18,000—Authorities report moral tone of cities greatly benefited by law enforcement—Reports from whole State show results are general.

[Republic special.]

JEFFERSON CITY, March 24.—Enforcement of the Sunday law during 1905 in cities formerly run "wide open" has, according to information gathered by Statisticians J. H. Nolan and A. T. Edmonstone, of the State bureau of statistics, saved to those five cities in a year's time \$27,955 in criminal costs, and reduced all crime about 20 per cent.

Sunday crime, when considered alone, has been reduced 40 per cent. The saving in criminal costs would alone be favorable argument for this good government had there been no moral benefits derived and did not wives and children gain thereby through receiving money for clothes and food and other necessities which formerly on Sundays passed over saloon bars.

In St. Louis alone the saving in criminal costs in one year represents more than enough to construct a hospital adequate to house 100 consumptives and provide them with food, fuel, and medicine for 100 days. Careful estimates based on returns made by the St. Louis police department show that the saving there for one year in criminal costs was \$18,220.

If the citizens would set aside this sum for a tuberculosis sanitarium it would only require \$12,000 to erect the eleemosynary institution, and \$6,200 to run it for the 100 days, and there would still be left \$22 to be used for emergencies.

The police of five cities, St. Louis, Kansas City, St. Joseph, Sedalia, and Chillicothe, furnished the figures which are used in the following summaries:

RESULTS IN ST. LOUIS.

The returns from the police of St. Louis are given first. In 1904 a total of 4,226 arrests were made on Sundays for misdemeanors, which, at an average of \$10 each, cost the citizens \$42,260. In 1905 the arrests on Sundays for misdemeanors sank to 3,514, which, at \$10 each, cost \$35,140, a decrease of 712 arrests and of \$7,120 in costs.

The police records reveal that 1903 was the banner year in St. Louis for arrests for felonies committed on Sundays, and that there were 552 of such violations. Two years later, 1905, found a decrease to 441, and this was a year which had fifty-three Sundays, one more than is generally the case. The decrease is 111.

The average cost of a felony case is \$100, which means that the decrease in criminal cost in felony cases was \$11,100. With the saving in misdemeanors the total decrease to St. Louis was \$18,220.

KANSAS CITY FIGURES.

Figures furnished by John Hayes, chief of police of Kansas City, show that the enforcement there of the Sunday law has not only saved this metropolis several thousand dollars in criminal costs, but has brought about much moral good. In 1903 the total arrests on Sunday for misdemeanors reached the high figures of 1,925. The next year saw a slight improvement, but in 1905 there was a still better state of affairs, as only 1,383 arrests were made, and this with 53 Sundays in the year.

The figures of Chief Hayes show other improvements. In 1903 on Sundays in Kansas City there were 7 serious assaults, as compared to only 1 recorded for the Sundays of 1905. Six murders were committed on the Sundays of 1903 and 6 on the Sundays of 1904, with none for the Sundays of 1905. On the Sundays of 1903 there were 1,130 arrests for common disturbances; in 1904, 1,050, and in 1905 just 678. For discharging firearms in 1903 there were 6 arrests; 1904, 10 arrests, and 1905, 1 arrest. For destruction of property in 1903 there were 25 arrests; in 1904, 29, and in 1905 the total was 22. On the Sundays of 1904 there were 10 arrests for "canning beer," and on the Sundays of 1905 not one. For gambling 376 arrests were made on the Sundays of 1903, and on the Sundays of 1905, 257.

RESULTS IN ST. JOSEPH.

Good results are recorded in St. Joseph in 1905 from the enforcement of the Sunday law. In 1903 17 arrests occurred for felonies; in 1904, 15, and on the Sundays of 1905, 7. Two homicides took place on Sunday in 1904, and in 1905 not one. On Sundays in 1903 there were 195 apprehensions for intoxication, and on the Sundays of 1905, 170. For ordinary disturbances, Sunday arrests were 128 in 1904 and 103 in 1905. For careless driving on Sundays of 1903 7 arrests were made, with 2 for 1905. For miscellaneous offenses growing out of the free use of intoxicants, the arrests on Sundays of 1903 were 22, and on Sundays of 1905, 6. ●

SEDALIA IMPROVEMENTS.

Marked improvement was shown in Sedalia during 1905 over both 1903 and 1904 because of the rigid enforcement of the Sunday law. The Sabbaths of 1903 had 41 arrests for misdemeanors; the Sabbaths of 1904, 35, and the Sabbaths of 1905, 24. On Sundays in 1903 there were 134 arrests in Sedalia for drunkenness, and only 51 for the Sundays of 1905.

The law-enforcing régime has benefited Chillicothe, the police say. In 1903 2 Sunday arrests were made for felonies and 3 for common assaults, but on the Sundays of 1905 there were no arrests for either of these offenses. The police records for 1904 give 4 arrests for Sunday disturbances and for the Sundays of 1905 3. For other offenses charged to the Sundays of 1903 65 arrests are credited; 1904, 43 arrests, and on the Sundays of 1905, 27.

RESULTS IN THE AGGREGATE.

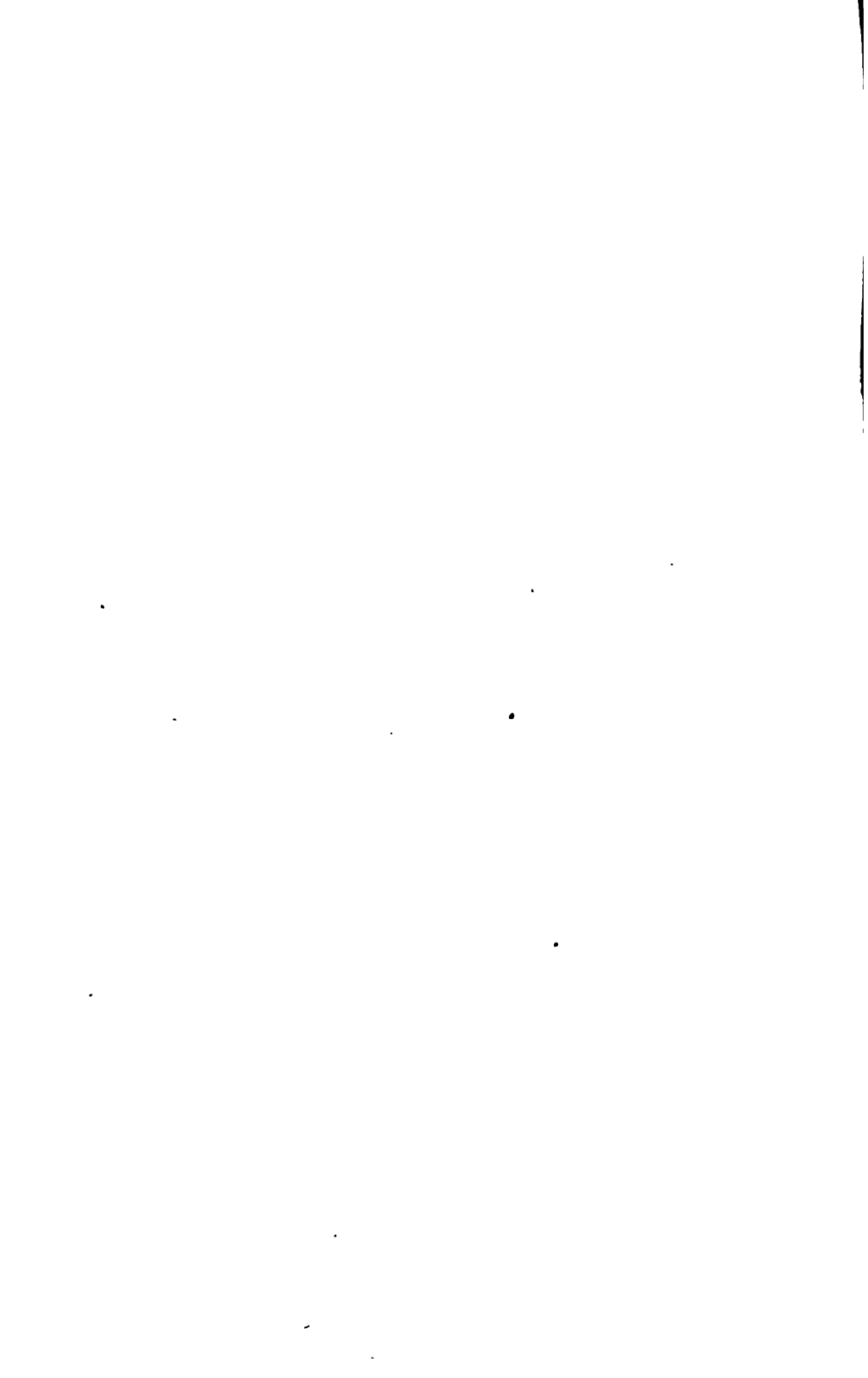
The police records of every city in the State show a similar improvement for 1905 over either 1903 or 1904. The following table gives the estimated saving in criminal costs for the cities mentioned above:

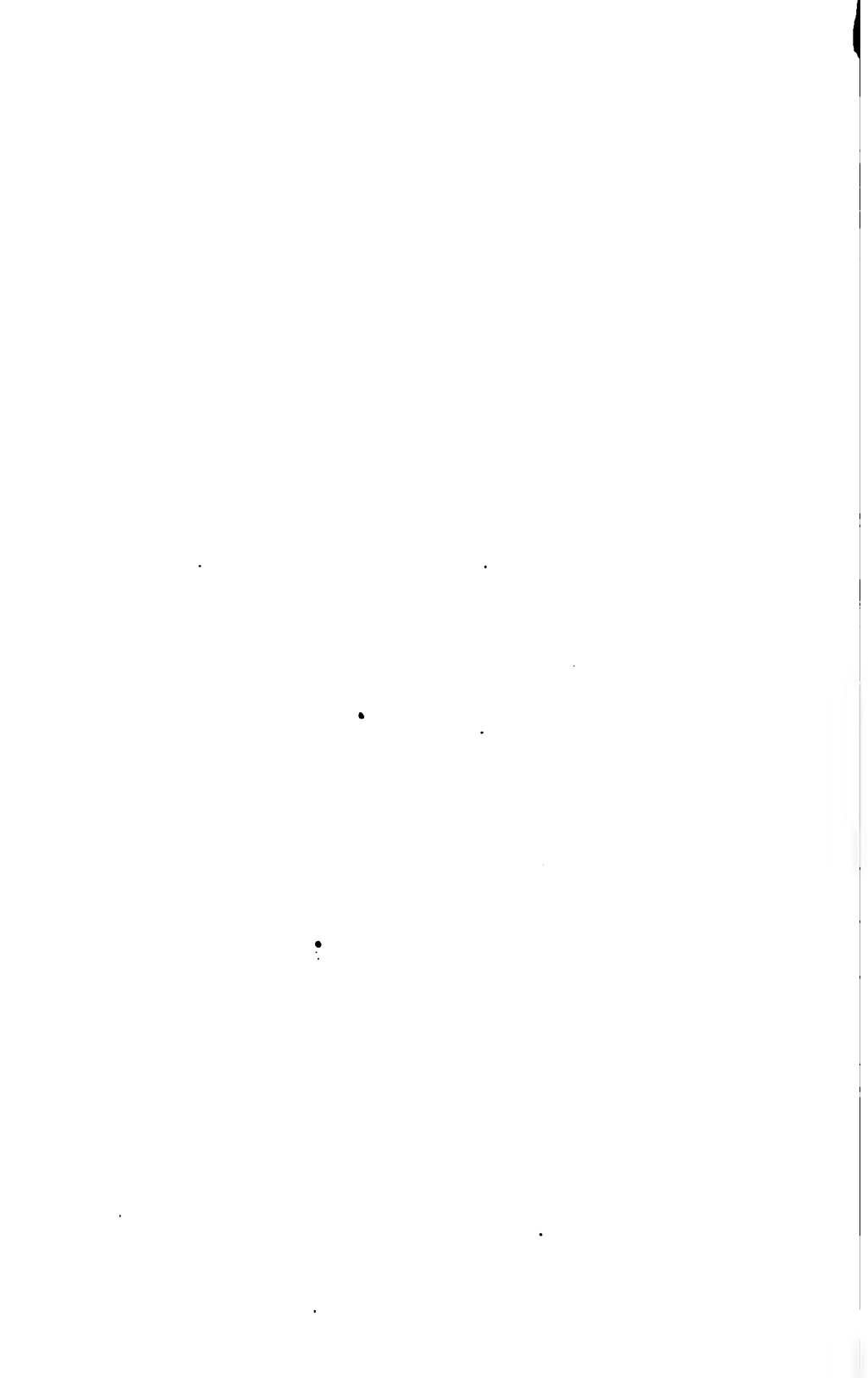
St. Louis.....	\$18, 220
Kansas City.....	6, 570
St. Joseph.....	2, 054
Sedalia.....	685
Chillicothe.....	430
Total.....	27, 955

Concerning the effects of prohibition in the State of Kansas I quote the following clipping from the Kansas City Star:

Of the 105 counties in Kansas only 21 have any paupers. Twenty-five counties have no poorhouses, 35 have their jails absolutely empty, and 37 have no criminal cases on their dockets.

The beneficent effects of prohibition in the State of Maine have been set forth by the gentleman from Maine, who is a member of this committee, in a very able article on the subject of prohibition in Maine, which was printed in the Philadelphia Record a few years ago. And his statements have been corroborated by Senators and by governors of that State.









HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY

OF THE

HOUSE OF REPRESENTATIVES

IN RELATION TO

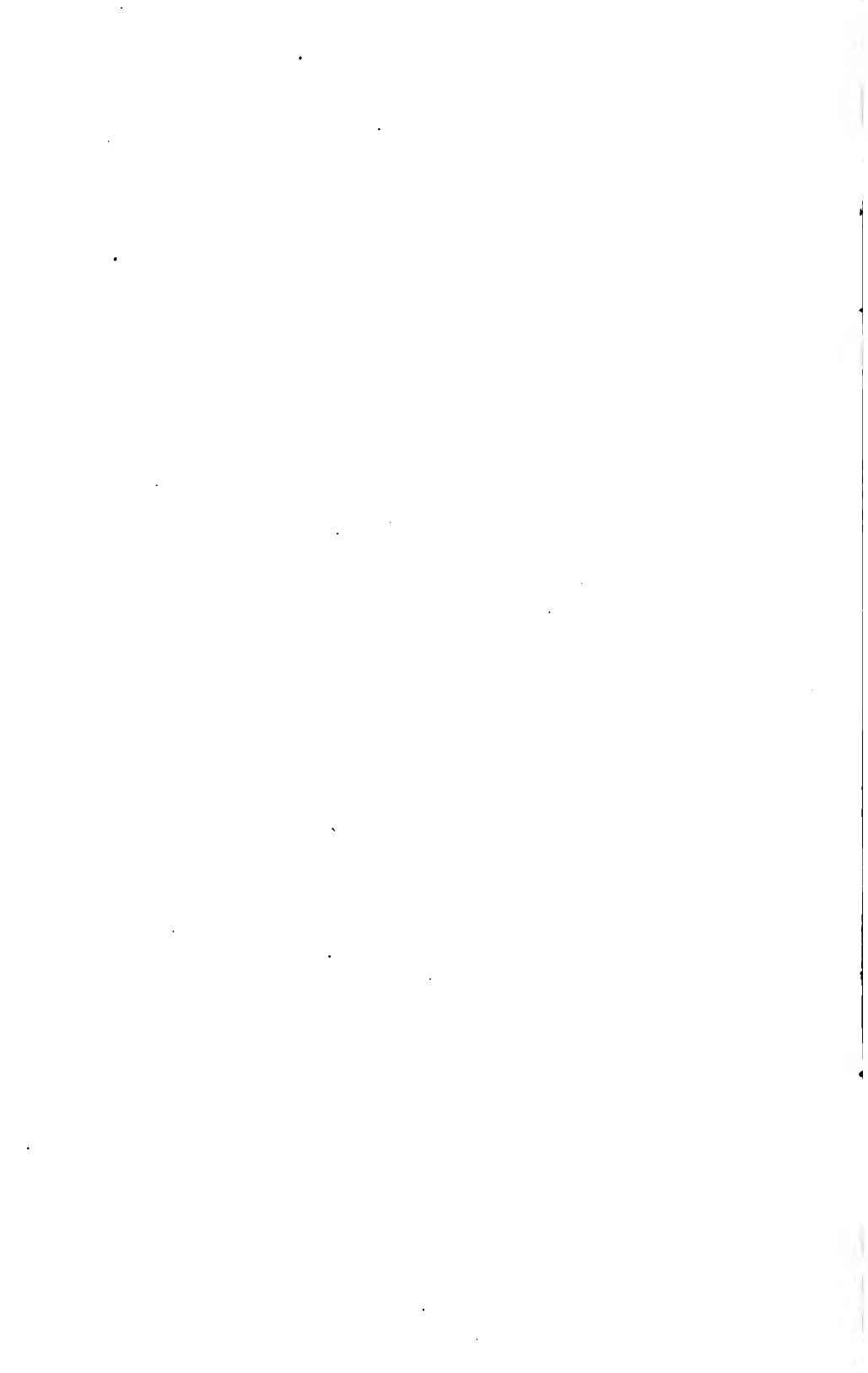
INSURANCE.

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WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1906.



INSURANCE.

COMMITTEE ON THE JUDICIARY,
Monday, May 14, 1906.

The committee this day met, Hon. John J. Jenkins in the chair.

There were present also the following gentlemen: Clayton C. Hall, actuary, department of Maryland, representing the governor of Maryland; Thomas E. Drake, superintendent of insurance, Washington, D. C.; Edward E. Rhodes, mathematician, Mutual Benefit Association, Newark, N. J.; James H. McIntosh, counsel, New York Life Insurance Company; Arthur Hunter, actuary, New York Life Insurance Company and secretary Actuary Society; John K. Gore, actuary, Prudential Life Insurance Company, and also second vice-president of the Actuary Society; Archibald D. Welch, vice-president and actuary, Phoenix Mutual Life Insurance Company, of Hartford, Conn., also treasurer of the Actuary Society; James M. Craig, actuary, Metropolitan Life Insurance Company, New York; J. Thomas Moore, superintendent agencies, Provident Life Insurance and Trust Company; James Ashbrook, vice-president, the Provident Life Insurance and Trust Company; William A. Fricke, New York Life Insurance Company; Douglas H. Rose, actuary, Maryland Life Insurance Company, Baltimore, Md.; William O'Mealey, secretary, the Provident Relief Association, Washington, D. C.; W. W. Chiswell, secretary People's Mutual Benefit Insurance Company, of Washington, D. C.; S. W. Cockrell, manager Employees' Mutual Benefit Association, Washington, D. C.; Frederick L. Hoffman, Prudential Insurance Company, Newark, N. J.; John Brosnan, president the Provident Relief Association, Washington, D. C.; Charles A. Hartmann, Union Insurance Company; William Joseph Graham, actuary, Minneapolis, Minn.; George Kuhns, field manager Bankers' Life Association, Des Moines, Iowa; G. W. Cave, manager, American Home Life Insurance Company, Washington, D. C.; Alfred S. Niles, counsel and treasurer of the Baltimore Life Insurance Company; E. B. Hay, attorney, Royal Life Insurance Company, Washington, D. C.; Robert H. McNeill, attorney, representing Globe Life Insurance Association, Washington, D. C.; Dr. T. T. Evans, president the Washington Industrial Underwriters' Association, Washington, D. C.; J. S. Swormstedt, president the Equitable Industrial Life Insurance Company, Washington, D. C.; John B. Larnier, attorney for the National Union Insurance Company and the Home Plate Glass Insurance Company, Washington, D. C.; Allen C. Clark, secretary the Equitable Industrial Life Insurance Company, Washington, D. C.; William A. Bennett, general superintendent the Equitable Industrial Life Insurance Company, Washington, D. C.;

H. J. Messenger, actuary, the Travelers' Insurance Company, Hartford, Conn.; Benjamin F. Crouse, State insurance commissioner of Maryland, Baltimore, Md.; H. C. Lippincott, manager of agencies, Penn Mutual Life Insurance Company, Philadelphia, Pa.; Jesse J. Barker, actuary, the Penn Mutual Life Insurance Company, Philadelphia, Pa.; Frank Abial Flower, president the National Mutual Benefit Corporation, Washington, D. C.; L. Pierce Boteler, secretary the Mutual Fire Insurance Company of the District of Columbia; Frederick A. Savage, general agent (Baltimore) of the New England Mutual Life Insurance Company, of Boston, Mass.; L. G. Fouse, president the Fidelity Mutual Life Insurance Company of Philadelphia, Pa., and Thomas D. O'Brien, State insurance commissioner, St. Paul, Minn.

The CHAIRMAN. As I understand, Congressman Ames will address the committee first this morning, and I suppose this hearing will be printed and will be laid before each member of the committee. We expect that before long other gentlemen of the committee will be present.

STATEMENT OF HON. BUTLER AMES, A REPRESENTATIVE FROM THE STATE OF MASSACHUSETTS.

Mr. AMES. Mr. Chairman and gentlemen of the committee, without attempting at this time to go into a detailed explanation of the bill which you have before you for consideration, I wish to state in as few words as possible the history of its conception and the way it has grown, so that the committee will understand the proposed legislation before them. There is no doubt in my mind that there is not a member present outside of the committee who has not read the bill through and gone over it—I have no doubt, a number of times—so I can be pardoned, I believe, if the committee will permit, in avoiding details at present.

If you remember, early last winter or this winter the subject of the Federal control of insurance was agitated in a special message to Congress, and on the basis of that there were a large number of bills introduced by members of the House proposing to regulate insurance through the interstate-commerce clause of the Constitution. Your committee has acted upon those bills and determined that they were beyond the jurisdiction of the House.

In order to get around the inability of Congress to legislate under this clause of the Constitution, this scheme was devised—I think it was first proposed by a Mr. Wayne McVeagh, and it has been so changed in its form that he probably would not know his own baby. The scheme was more or less to draft a model code of insurance law, such as would protect the policy holder and protect a company doing a legitimate business; to establish, first, the law in the District of Columbia, where Congress, of course, is supreme, and then, with that as a standard, going out to the country and letting the moral sense of the community, public opinion, force by competition all companies to come within the provisions of such a code. On those lines a bill was drafted with the assistance of Mr. Frederick H. Nash, of Massachusetts, who was the assistant attorney-general of that State for some six years. He has just been taken into the firm of Choate, Hall & Stewart, one of the largest law firms in the State. I have

been given to understand that Mr. Nash would have been appointed Assistant Attorney-General of the United States if he would have accepted the position. Mr. Nash fought all the insurance battles for the State commission. So you see the best of advice was sought and utilized in the first drafting of the bill.

Mr. LITTLEFIELD. Was that upon the theory of Federal control?

Mr. AMES. No; it was for the purpose of creating a model code, and to do that the laws of all the States were gone through very carefully and the best features were taken out. We started with our Massachusetts Code as a standard or as a nucleus. I think every decision of the courts on insurance legislation was gone through and card indexed in connection with this tabulation. The best features of the several States were incorporated in the bill. Then there was a convention called of the insurance commissioners and governors and attorneys-general and insurance men all over the country at the instigation of some governor—I think Governor Johnson, of Minnesota, if I am not mistaken—which met in Chicago about the 1st of February. By that time the Armstrong report was expected. In fact, it had been promised before the date of the convention, as the convention desired to have the benefit of the report before it, but owing to the extensive matters considered in the report or in the investigations of the committee, that report was not on hand at the date of the convention. So, after listening to a number of insurance men and having listened to an explanation of this first draft of the bill, the convention adjourned without accomplishing or doing much except to appoint a subcommittee of 15, with Mr. O'Brien, the insurance commissioner of Minnesota, at its head. This subcommittee was to draft a model code of insurance law, and to submit its report on its draft to the full convention of commissioners when they again met, which, I believe, was to be this summer, in August or September. This subcommittee took the first draft that I have told you about, and employed a lawyer, and went to a great deal of labor and work. They took what they could get out of the Armstrong bill, and with some amendments that I have—

Mr. LITTLEFIELD (interrupting). That is the New York legislation?

Mr. AMES. Yes, sir. They met again about the 15th of February, and agreed, without any dissension, to the draft as you see it here before you. The draft is by no means perfect. I have a large number of amendments, none of them very radical, that I tried to get ready in time to distribute this morning to each member present, but I found that it was impossible to do so. I hope this afternoon to give every member a mimeograph copy of the proposed amendments, which, I think, meet all the objections that have been made and strengthen the bill in a number of respects.

To expedite the consideration of the measure, I think that, inasmuch as everyone present has gone over the bill carefully, and has been through the Armstrong bill carefully—

Mr. LITTLEFIELD (interrupting). You mean the gentlemen here interested in the bill?

Mr. AMES. Yes, sir; if anyone is here present who has not gone through this bill I wish that they would either rise or hold up their hand. I will take up the bill and go through it by sections. Of course if there were people here who did not know the purpose of the

bill or the object of the legislation they would want to have a general resumé of the whole bill rather than to take it up in sections.

Mr. LITTLEFIELD. I think you had better carefully explain the bill in detail.

Mr. AMES. Would not a full explanation of the bill by sections be more satisfactory to the committee?

Mr. LITTLEFIELD. The committee should have a good detailed knowledge of the proposed legislation.

Mr. AMES. The bill is not essentially different in many respects from the present New York law.

Mr. LITTLEFIELD. Have you included everything in the bill that is involved in the recent New York legislation?

Mr. AMES. Not everything; no. The wording is quite different, but the objects attained are practically the same, with a few exceptions, which I am going to enumerate.

The Armstrong or the New York code values its policies on what is known as the select and ultimate method, which may not be understood by the committee. I believe I could give a correct explanation of the method, but I should prefer to leave it to some one of the talent that I see here. The present bill before you uses the preliminary term method of valuing a policy. This was insisted upon by every one of the committee of fifteen. Massachusetts does not believe in the preliminary term and neither does New York, but without it the western commissioners believed that new companies would have insuperable odds to overcome in organization. While, perhaps, no one of the committee absolutely agreed upon every provision of the bill, still giving and taking all around made possible the approval of such a measure as you have before you.

I submitted the bill in this form and it was so printed, because that was the unanimous sentiment of the subcommittee of insurance commissioners. These amendments that I have to propose, some of which I do not believe in myself, although I am quite prepared to be convinced that they are correct, must not be taken as an expression of approval on my part. I am simply trying to perfect the bill. I performed my trust to the committee of fifteen by presenting the bill which you have before you.

Mr. LITTLEFIELD. The subcommittee of fifteen has agreed on the amendments you have here?

Mr. AMES. No, sir. I have not had an opportunity to talk over these amendments with all the members of the subcommittee.

Mr. LITTLEFIELD. The amendments have simply been drawn by you to meet the various objections presented from time to time?

Mr. AMES. We arrived at these amendments after consultation with some of the best actuaries of the country and some of the best insurance commissioners. The amendments are for the purpose of perfecting and strengthening the bill.

Mr. GILLET. How many amendments have you?

Mr. AMES. I have not counted them. Here they are [exhibiting amendments].

Mr. GILLET. They have not been submitted to the committee?

Mr. AMES. No, sir; I tried to get them into mimeograph form this morning, but we did not get them ready until yesterday afternoon, and it was impossible to get the work done, yesterday being Sunday.

Mr. Chairman, I see that the chairman of the subcommittee of fifteen of insurance commissioners is present, Mr. O'Brien, of Minnesota, and I think that he can very well explain to you the action and the feeling of the commissioners and their subcommittee on this legislation.

STATEMENT OF MR. THOMAS D. O'BRIEN, INSURANCE COMMISSIONER OF THE STATE OF MINNESOTA, ST. PAUL, MINN.

Mr. O'BRIEN. In response to Mr. Ames's suggestion, I will make a statement with reference to the committee of which I happen to be chairman. The primary object for which that committee was appointed was to secure as uniform legislation in the States as possible, and the committee is to hold meetings during the ensuing few months for the purpose of arriving at conclusions which are to be reported to the Insurance Commissioners' National Association, which meets in this city next September.

At the meeting in Chicago on March 20 at the solicitation of the Federal authorities the members of the committee who met considered this bill prepared by Mr. Ames and made a certain number of suggestions, and I think the whole as a draft was unanimously approved by the members present.

Mr. LITTLEFIELD. When was that?

Mr. O'BRIEN. On the 20th of March.

Mr. LITTLEFIELD. Was that before the committee here had passed on the question of Federal control?

Mr. O'BRIEN. My recollection is that our meeting took place afterwards. Many of us had rather strong conclusions upon the same subject before your committee announced that conclusion.

The committee, as I say, approved of the principles embodied in this bill. The details of the bill, we probably realized as much as anybody, could be largely amended in so far as the main portion of the bill is concerned. The majority of the sections, as Mr. Ames has said, follow the well-approved laws of different States, such as New York and Massachusetts. The new features of the bill follow, first, the bills adopted by the legislature of New York at its recent session. In the present draft of this bill the Armstrong bills are embodied as they were originally reported. Those Armstrong bills were very much amended. The present printed form of this bill as to the annual accounting, annual reports, standard forms of policies, and matters of that sort follows the Armstrong bills as they were originally reported to the legislature of New York. Subsequent to that report, and after our meeting in Chicago, the Armstrong committee took the bills, they were reported back from the legislature, and, with the aid of a large number of actuaries in this country the bills were gone over and amended in many particulars, and this bill, of course, should be amended so as to follow those amendments which were made in the Armstrong bills after the meeting of the committee in Chicago on the 20th of March.

In addition to following the bills on standard forms of policies and annual accounting this bill provides for a method of examination for the District of Columbia and the building up of a department in the District of Columbia, which is entirely new in this bill. To my mind

that is the most important section in this bill so far as legislation is concerned. The provisions are also new with regard to the method of electing directors.

Mr. LITTLEFIELD. Upon what general lines have you proceeded in the bill—upon the general lines of Federal control or upon the lines of municipal control?

Mr. O'BRIEN. You are referring to what section?

Mr. LITTLEFIELD. The whole construction of the bill.

Mr. O'BRIEN. The construction of the bill in the first place is made up of a large number of well-approved ordinary laws that appear upon the statutes of the State of Massachusetts, the State of New York, and other States, about which there is no dispute. On the question of annual accounting—

Mr. LITTLEFIELD (interrupting). Does your whole bill in its genesis contemplate the creation of a Federal control or a State control—that is, Congress acting as a State legislature in its municipal capacity in the District of Columbia, or acting in its Federal capacity as a Federal legislature?

Mr. O'BRIEN. The bill provides, in the first place, for complete control by Congress, acting, as you say, as a State, and in addition to that the bill provides that the department of the District of Columbia shall make examinations of companies upon the request of the insurance officer of any State, so that in that way there is cooperation brought about between the States and the Federal Government, and the machinery is afforded by which the Federal Department can become the great Department in the United States.

Mr. LITTLEFIELD. And in your conception it is the Federal Government acting as a municipal legislature all the while?

Mr. O'BRIEN. Absolutely.

Mr. LITTLEFIELD. It is your idea of the bill to have it enacted by Congress as applying to the District of Columbia?

Mr. O'BRIEN. Yes, sir.

Mr. LITTLEFIELD. As distinguished from undertaking to exercise Federal control?

Mr. O'BRIEN. Yes, sir.

Mr. HENRY. The department of the District of Columbia would come under section 5, which provides for the Department of Commerce and Labor to take charge of certain insurance matters.

Mr. GILLET. Are you looking toward Federal control of insurance companies?

Mr. O'BRIEN. Personally—

Mr. GILLET (interrupting). I mean the bill.

Mr. O'BRIEN. No; I do not think this bill does.

Mr. HENRY. The bill puts it under the Department of Commerce and Labor?

Mr. AMES. That is only the District of Columbia.

The CHAIRMAN (Mr. Parker). Mr. O'Brien, I understand you to say that the bill has two parts, one of which I understand to be the provisions which are ordinary and which follow the laws of a great many States with reference to the organization and management of District corporations, pure and simple, just exactly as if State corporations?

Mr. AMES. That is correct.

Mr. PARKER. The second one I understand to be the organization of an insurance bureau in the Department of Commerce and Labor, which shall have the power to examine insurance companies whether they be organized within or without the District of Columbia, but whose approval shall be necessary for their doing business within the District of Columbia?

Mr. O'BRIEN. Yes, sir.

Mr. PARKER. Has that second section been made applicable to all United States territory, or only to the District of Columbia? That is to say, has the approval of this insurance commissioner been made necessary to the doing of insurance business within the Territories, the insular possessions, and the District of Columbia of the United States?

Mr. O'BRIEN. I can not answer that question from memory. My recollection is that it is only for the District of Columbia.

Mr. AMES. To make this bill comply with the legal machinery necessary for that control over the insular possessions and the Territories would have made the bill enormous. For instance, the insurance commissioner of the District of Columbia could not very well act as the "Johnny on the spot" for the Hawaiian Islands.

Mr. PARKER. You call him the insurance commissioner of the District of Columbia, under the Department of Commerce and Labor?

Mr. AMES. Yes, sir.

Mr. PARKER. I thought the object of the bill was twofold; that one object was to regulate the incorporation and management of purely District corporations, and the second was to provide a United States examination of all insurance companies who should be allowed to do business within the United States territory and the laws by which their reserves and their surrender values should be approved?

Mr. O'BRIEN. The object of the men who framed the bill was to provide, in the first place, for an efficient department to regulate the business of insurance within the District of Columbia, and in addition to that, with the opportunities supposed to be afforded, to build a department in this District which would be a leading department in the United States; and we believed that this would not only be advantageous to the States themselves and for the citizens of the United States generally, but that it would be highly advantageous for the insurance companies. The demand for Federal supervision has been based upon the fact that the insurance companies have claimed to have been at the mercy of every State, and that there were constant examinations over and over again; that there was no central department from which examinations would be made, and each State commissioner acting entirely independently, harassing demands have been made upon the insurance companies, some of them foolish and vicious. Now, if there can be a legal and constitutional provision for a great central department in the District of Columbia, nearly every ground upon which Federal supervision has been demanded will be removed, every objection to State supervision will be removed, and the rights of the States to say what companies shall come into the States will be maintained fully and entirely. After giving the matter considerable thought, I have come to the deliberate conclusion—and I believe it to be true—that if the spirit of this bill with regard to the District of Columbia can be carried out the best fea-

tures of Federal supervision will be entirely secured, and none of the features incorporated which so many of us object to.

Now, when it comes to the details of this matter as to whether this should be under the Department of Commerce and Labor and matters of that sort, those matters I am not entirely familiar with, but the principle of it is that a great central department can be created here entirely under the law and entirely in accordance with the situation which will result in the greatest benefit to me and my department and the people at large in the United States. A company starts out to be admitted to ten or fifteen States at once. They determine to enlarge their territory. Each State commissioner insists upon an examination, and with a perfect right; he wants to know what it is, and very often the departments are controlled by the large companies, especially within the States. Let that company go to another State with not only the report of a commissioner from its State, but with a certificate from the insurance commissioner of the District of Columbia, and let him be as particular as he chooses, he will not dare to say that those two certificates were not sufficient to justify its admission.

Mr. LITTLEFIELD. What legal distinction can there be between a commissioner of the District of Columbia acting by virtue of State authority conferred by the United States and a commissioner of any other State?

Mr. O'BRIEN. There is no legal difference.

Mr. LITTLEFIELD. Where is the substantial difference; because you will get a better man?

Mr. O'BRIEN. You have these two examinations. The commissioner of the State in which the company is located acts as a check upon the District of Columbia and the District of Columbia acts as a check upon the commissioner of the State.

Mr. GILLET. Take a company doing business in Illinois which is incorporated in New York, and if it refuses to permit the commissioner of the District of Columbia to examine its books, can you get away from that?

Mr. O'BRIEN. No, sir. I do not think the United States Government has the right in that case to interfere.

Mr. LITTLEFIELD. Unless the company is organized in the District of Columbia or doing business in the District of Columbia we can not reach them, then?

Mr. O'BRIEN. It is exactly the same as in the State of Minnesota.

Mr. ALEXANDER. If a company should refuse to allow an examination by the commissioner of the District of Columbia it would need to advertise a little to get policies?

Mr. O'BRIEN. If a company refused to be examined, they would not do any business in Minnesota.

Mr. GILLET. Would you think that their refusal would put them out of business?

Mr. O'BRIEN. I think that any insurance company that would decline to have an examination made by a reputable supervising officer would be put out of business and ought to be.

Mr. GILLET. If this bill should become a law, it would compel every insurance company, no matter where incorporated, to be under the control of this commissioner?

Mr. O'BRIEN. Not at all.

Mr. GILLET. And if they do not consent to an examination they would be forced out of business?

Mr. O'BRIEN. That is not it.

Mr. GILLET. No reputable company would dare to refuse to permit the examination?

Mr. O'BRIEN. I do not think they would.

Mr. GILLET. You provide in the bill that if the commissioner requests an examination to be made the examination shall be made if the company consents. You want to examine a company not in this District, but incorporated under the laws of New York and doing business in my State, and if they refuse to permit this commissioner to make the examination you say they might as well go out of business. Therefore you have them absolutely under your control if they do not comply with your demands?

Mr. O'BRIEN. Take the case of California. California is somewhat different from Minnesota. You probably have not as many insurance companies as we have in Minnesota. There are 507 insurance companies, all told, in Minnesota. It is practically impossible for me to know the details as to the great majority of those companies, and it is impossible for your Mr. Wolfe, who is one of the best commissioners in the United States, to know anything about the details of the majority of companies doing business in California. A large portion of the savings are invested in the policies of companies doing business in that State, but not organized under the laws of the State of California. Do you not believe that it would be an advantageous thing to the people of California if there was a department in the District of Columbia, so that when Mr. Wolfe saw in the annual reports that the assets were depleted, that the valuations on real estate were too large, he could demand from this department that they give him the information that he wanted?

Mr. GILLET. That might be very true if we could not reach it directly by national act. Now, you are seeking to have it done indirectly?

Mr. O'BRIEN. It has been done a number of times.

Mr. LITTLEFIELD. This would add 1 to the 45 insurance commissioners, making 46. If Mr. Wolfe, out in California, has not time to find out what insurance companies are doing business in his State, how does Mr. Jones, the District commissioner, get more time or capacity to find it out, or is this commission for the District of Columbia to be simply the clearing house for all the insurance companies in the country?

Mr. O'BRIEN. I should hope to see it come to that.

Mr. LITTLEFIELD. Why can not Mr. Wolfe ascertain the facts just as well as Mr. Brown, in the District of Columbia, and if the company is located in the District of Columbia and is not located in California, why can not he do it just as well as Mr. Brown can here? Of course he may not have the time and the commissioner here may not have the time.

Mr. O'BRIEN. It is a question of time, and it is a question of the size of the department. It is a question of the amount of funds at the disposal of the department. The insurance companies have to pay all the expenses of the department in my State. It would cost me to do that an expenditure of \$50,000 a year.

Mr. ALEXANDER. In other words, you want the United States to pay for doing what the 45 States will not do?

Mr. O'BRIEN. I want the Federal Government to cooperate with the State governments. This demand would very seldom be made, but in my judgment it is advantageous to everybody.

Mr. HENRY. How much does this bill carry?

Mr. O'BRIEN. I do not know.

Mr. PARKER. You say the companies pay the States for this expense. Would they pay the District commissioner?

Mr. O'BRIEN. That would be a matter within the discretion of Congress. This bill provides that where the examination is made at the request of the District of Columbia the Government pays for it, and where the examination is made at the request of the company the company pays for it.

Mr. GILLETT. Then, the Federal Government would be put in the position of making all the investigations for the various States of the Union?

Mr. O'BRIEN. Yes, sir.

Mr. GILLETT. Then would not all the States turn it upon the back of the Federal Government in order to save the expense?

Mr. O'BRIEN. It would be a tolerably good thing if they did.

Mr. LITTLEFIELD. Would it not relieve the 45 commissioners of all responsibility?

Mr. O'BRIEN. It would relieve them from the demand.

Mr. BRANTLEY. I notice that the insurance commissioner is to be under the Department of Commerce and Labor and that the deposits of the insurance companies are to be made with the Treasurer of the United States. If we pass this bill and it chances to be such a bill as the insurance companies want would there be anything to keep all of them from incorporating in the District of Columbia under this law, and if they did incorporate in the District of Columbia under this law would not every insurance company be directly under the control and supervision of the Federal Government?

Mr. O'BRIEN. Yes, sir.

Mr. ALEXANDER. It is patent on the face of your statement, and you have been decidedly frank, that this would unload upon the General Government what the States now imperfectly propose doing. Now, supposing it does unload it upon the Government, can the Government do it better; and if so, how, than the different States?

Mr. O'BRIEN. In the first place, so far as unloading this upon the General Government is concerned, that is a condition that never would arise. It is only occasionally that these examinations are wanted, so that the idea that the department would be entirely at the beck and call of the States is not to be expected. The Government could do it better for the reason that, in the first place, the presumption is that the department would be a central department and would be very thoroughly equipped—that is to say, it would attract to itself the best class of men, men not only skilled, but men above reproach, and they could do the work better than the States. It is not an easy thing for the commissioner of any one State to determine what should be done in another State, and it is a perfectly fair presumption that the commissioners in the different States are inclined to favor the companies doing business within their own States. They

are bound to them by many ties. They have, perhaps, associated all their lives with the officers of those companies. They like them. The commissioner may have occupied more or less business relations with them, and to say that he has got to make the same drastic examination of the companies that ought to be made under those circumstances ought not to be expected, and it is not done. There is no necessity, and in some places it has been made and in other places it has not been made.

Mr. LITTLEFIELD. What States are they?

Mr. O'BRIEN. Of course you appreciate the fact that in any discussion of this sort I do not intend to call names. There are some Departments in the United States which stand out very conspicuously. There are other Departments that do not.

Mr. BIRDSALL. There is nothing in this bill that compels an insurance company to incorporate within the District of Columbia or to come here for examination?

Mr. O'BRIEN. No, sir.

Mr. BIRDSALL. It is simply to provide a Federal tribunal for the examination of all insurance companies and also to regulate those who do business within the District of Columbia, and these States, acting by comity, will accept the certificate of the examination made here for permission to do business within their respective States?

Mr. O'BRIEN. Yes, sir.

Mr. LITTLEFIELD. This paragraph on page 6 of the bill is really intended to catch them:

At the request of the commissioner of insurance or other officer having similar duties of any other State, and with the consent of the company, he shall make such examination of any company not authorized to do business in said District.

That is moral compulsion?

Mr. O'BRIEN. Not necessarily. It could be used as moral compulsion by any person so desiring.

Mr. LITTLEFIELD. Why is it put in the bill?

Mr. O'BRIEN. Sometimes a company desires to enlarge its field of operations and it makes simultaneous application to 10 or 15 States for admission before starting out to enlarge its field of operations. If that company submitted to an examination in the District of Columbia and then came to my department with not only the certificate of examination of its own State, but in addition the certificate of examination of the District of Columbia, it would be admitted without question, unless both those Departments were disreputable.

Mr. LITTLEFIELD. The purpose of this section is that if they do not voluntarily take the examination to morally compel them to take it?

Mr. O'BRIEN. Why?

Mr. LITTLEFIELD. Why do you want to have this language in the bill if you do not want to morally compel them to take the examination? It might be a good thing to do it, to compel an insurance company that is not doing business in the District of Columbia to come here and get a certificate of good health and character. Why do you provide here that when you request the commissioner of the District of Columbia to make that examination, with the consent of the company, he shall make it? It may be perfectly proper.

Mr. O'BRIEN. You and I will not get into any controversy. I think the reason you do not understand that is because you have not

the practical knowledge of this matter I have, and I have not very much. For instance, at the present moment an insurance company is applying for admission to the State of Minnesota, in which it seems an examination is necessary before I admit it. I am not able to make that examination; I have not the time; I have not the machinery to do it. My department is too small a department, and that is one of the objects of that provision. There you get with it the power to compel them to come here morally, just as you say; but if that was left out altogether there would still be a reason for that provision.

Mr. BIRDSALL. Is it likely that an insurance company would object upon moral grounds to a provision that is entirely for their benefit?

Mr. O'BRIEN. They are here and can speak for themselves.

Mr. AMES. There has been some criticism of the bill on the part of the members of the committee as to its length. A large part of it provides for the incorporation of domestic companies, and that has been made necessary by the absolute lack of proper provisions in the District Code.

Mr. LITTLEFIELD. Is there any legislation of any consequence in the District of Columbia on the question of insurance?

Mr. AMES. There is very little; and in order to give you all the information possible, I would like to have you listen to Mr. Drake, the commissioner of the District of Columbia, who will tell you about the code law as it stands to-day and the necessity of its enlargement.

STATEMENT OF MR. THOMAS E. DRAKE, INSURANCE COMMISSIONER, WASHINGTON, D. C.

Mr. DRAKE. Mr. Chairman and gentlemen of the committee, I am not a lawyer, neither am I the originator of this bill; but I have had, however, to some extent, a hand in its formation. I am here more to represent the interests of the District of Columbia in the matter of our present code as it exists. I had been of the opinion for some years prior to my appointment here as superintendent, and since, that the home of the nation should have the best insurance laws in existence. As it is, we have the poorest. We had at the outset practically nothing but a provision for a superintendent and one clerk. Congress has, however, since been liberal—that is, to some extent—since the department was created four years ago, and there has been added from time to time to that clerical force of one at the beginning, an examiner and a statistician, with a few temporary clerks.

It was my idea before being appointed superintendent of insurance of the District of Columbia, and I so stated to the commissioners during my first visit to them at their call from the Ohio department, where I was the deputy superintendent, that on account of the laws being so defective and ambiguous and conflicting in the District of Columbia I would make it my business as soon as possible after the department was organized and established to collect copies of all the statutes of the States and with efficient help compile a code that might be considered a model for the States to pattern after. After it had been enacted into law, last August, I began to see my way clear to do this, and I called upon all the commissioners to send me two copies of their statutes, so that this work might be commenced. I had not begun it, however, when Congressman Ames

called upon me with a draft of his bill, he having submitted it to the President, who requested him to resubmit it to me for investigation, examination, etc. I felt greatly relieved at this step, which was unbeknown to me, and also the gentleman who was the author of the bill, until then, knowing that it would relieve me of a great responsibility. The President requested me to examine it, and also that a call be made at Chicago for the purpose of convening State officials, consisting of the governors, the attorneys-general, and the commissioners, with a view, if possible, of formulating such a law which, if enacted in the District of Columbia, the States could, if they so desired, enact, so that in time we should have uniform laws. That is the principal object and motive of this bill.

As I understand it, the bill is strictly local and confined strictly to the District of Columbia, but with the proviso that if the States comply with certain conditions they can get information from this department, thus saving, as explained so clearly by Mr. O'Brien, the enormous expense to companies in connection with their establishing agencies. For instance, we have, including the Territories and the insular possessions, 52 insurance departments, and every time a company wants to enter a new State it must comply with the local laws, which, in the first place, means that the company must be subjected to an examination. If satisfactory it is accepted. Then it goes to another State and it is subjected to another examination, and so it continues. It was thought by the author of this bill that if a law could be so framed here in the District of Columbia that this duty might be imposed upon this department it would save all this expense. That is the prime motive in having it transferred from the District of Columbia to the Department of Commerce and Labor. This course would also entitle the Department to recognition by foreign Governments.

Mr. LITTLEFIELD. Is it not indirectly accomplishing what the committee held could not be done directly?

Mr. DRAKE. I do not so understand it. I understand this is purely a local measure.

Mr. LITTLEFIELD. Do you not make it Federal if you put it into a Federal department?

Mr. DRAKE. We have a number of that kind of cases in the District. There are appointments made direct by the President, officials of the District of Columbia.

Mr. LITTLEFIELD. The President can make appointments in the District?

Mr. DRAKE. I am not a lawyer; that is a legal question.

Mr. LITTLEFIELD. In substance, that was the idea that you wanted to see accomplished by the legislation?

Mr. DRAKE. Yes, sir; to save the enormous expense to companies in the establishing of their agencies by having to be subjected in every State they go into to an examination.

Mr. LITTLEFIELD. How many domestic companies are there in the District of Columbia?

Mr. DRAKE. We have, including fire, life, assessment, and fraternal insurance companies, about 40.

Mr. LITTLEFIELD. Are they of recent origin, or have they been in operation some time?

Mr. DRAKE. Some date back, I think, as far as 1818, and the most recent is within two months.

Mr. LITTLEFIELD. And up to within four years they had no District supervision?

Mr. DRAKE. No, sir. They simply collected taxes and license fees.

Mr. STERLING. What are some of the life companies?

Mr. DRAKE. We have only one regular company, that is the Equitable Industrial Life Insurance Company. We had the National Life Insurance Company of the United States, but that was afterwards reorganized under the laws of Illinois.

Mr. LITTLEFIELD. What does the Equitable do; the industrial insurance?

Mr. DRAKE. Industrial insurance and also what they call ordinary insurance.

Mr. LITTLEFIELD. Do they do industrial insurance on the lines of the Prudential Company?

Mr. DRAKE. Yes, sir.

Mr. BIRDSALL. What is the purpose in shutting out from the District of Columbia assessment insurance companies?

Mr. DRAKE. I do not know.

Mr. BIRDSALL. That is in section 56?

Mr. DRAKE. That is arranged, I believe, to be amended, as it should be. The Congress is responsible for the existence of 14 assessment companies.

Mr. BIRDSALL. Section 56 would absolutely prohibit their doing business in the District of Columbia?

Mr. DRAKE. That was an oversight. We have 14 assessment companies here that the District is responsible for, and they should be protected the same as the old-line legal-reserve companies.

Mr. BIRDSALL. What would be your suggestion along that line, or are there amendments prepared?

Mr. DRAKE. Yes, sir.

Mr. LITTLEFIELD. What is your view, Mr. Drake, as to the wisdom and propriety of that kind of insurance as compared with the old line; is it wise or unwise?

Mr. DRAKE. I would rather not express myself on that point. There are some very good ones in the District. In administering the law I do not permit my judgment to be warped by any personal view of the matter. My opinion is that we ought to take care of those in existence, but not permit any more to organize.

Mr. LITTLEFIELD. You do not approve of that kind of insurance?

Mr. DRAKE. No, sir; but I believe in taking care of those companies here that are in existence, and that the District of Columbia is responsible for.

Mr. ALEXANDER. You approve of this bill, at least so far as you have had a hand in formulating it?

Mr. DRAKE. Yes, sir.

Mr. ALEXANDER. You did have a hand in formulating the assessment company provision?

Mr. DRAKE. Yes, sir; as amended, and I suggested that at the outset as a feature of the bill, but it was not adopted.

Mr. LITTLEFIELD. Section 56 does not provide for any existing companies?

Mr. DRAKE. The bill as amended or proposed to be amended is very nearly equitable and right. It is copied largely after the New York law.

Mr. LITTLEFIELD. The amendment meets your approval and that of Brother Ames?

Mr. DRAKE. Yes, sir.

Mr. HENRY. You say this is purely a local measure and yet in another section you provide for deposits to be made with the Treasurer of the United States, if a foreign company, or if a company organized under the laws of some of the States, and those deposits are to inure to the policy holders?

Mr. DRAKE. That is the law.

Mr. HENRY. Whenever they come into the District of Columbia you require these deposits to be made in the Treasury of the United States and they shall be held for the benefit of the policy holders in the United States. Does that not make it a Federal organization?

Mr. DRAKE. No, sir.

Mr. HENRY. I will read section 79.

Mr. DRAKE. I am just told that there is no other officer with whom to deposit these funds except the United States Treasurer.

Mr. HENRY. Let us read section 79:

SEC. 79. That such foreign company, if incorporated or associated under the laws of any government or state other than the United States or one of the United States, shall not be admitted until, besides complying with the conditions of the preceding section, it has made a deposit with the Treasurer of the United States or with the financial officer of some State of the United States, of an amount not less than the capital required of like companies under this chapter. Such deposit must be in exclusive trust for the benefit and security of all the company's policy holders and creditors in the United States, and may be made in the securities in which domestic insurance companies are by this statute permitted to invest their capital, and such deposit shall be for all purposes of the insurance laws the capital of the company making it.

Mr. DRAKE. It is the equivalent of being deposited with the District of Columbia, because we have no other depository here.

Mr. CLAYTON. This makes the United States a trustee for the policy holders.

Mr. AMES. If a company is organized under the laws of a State and incorporated thereunder, it has to deposit its capital stock there.

Mr. CLAYTON. We understand that, but here is a proposition to make the Federal Government the trustee.

Mr. AMES. Suppose a company organized in England or Germany—

Mr. CLAYTON. We understand that, but here is a novel proposition to make the United States the trustee of certain people. That is a novel proposition.

Mr. AMES. Is not the District of Columbia under Federal control?

Mr. CLAYTON. Yes, sir; but we do not make the Treasurer of the United States the trustee of anybody, and never have done so. I submit to you if that is not a novel proposition.

Mr. DRAKE. I am informed on good authority that the Treasury holds a good many funds of this kind.

Mr. CLAYTON. Where does the Federal Government get the right to act as trustee of a foreign company? Where is the authority? Where is the grant of power to do this?

Mr. DRAKE. I would like to have Mr. Larner explain the situation.

Mr. LARNER. Mr. Chairman, this brings me back to the fact that there is some misunderstanding in reference to the functions of the United States Government and the District of Columbia, especially in reference to finances. The District of Columbia and the United States, although separate and distinct, one being a municipality and the other the United States, yet for all practicable purposes the District of Columbia and the United States are one and the same thing.

Mr. LITTLEFIELD. You mean that as a legal proposition?

Mr. LARNER. I am speaking of that as a legal proposition. As a practical fact, every dollar that is appropriated is appropriated out of the United States Treasury. All money collected in taxes by the District of Columbia goes into the Treasury of the United States and is appropriated by Congress from the Treasury of the United States. In fact, all the moneys that come from our various departments, the moneys that come from the collector's office of the District, all the money that comes from the recorder of deeds' office, all those moneys go into the Treasury of the United States; and so it would be in this particular case, the money that would come in from this department would go into the Treasury of the United States, just the same as it does in the case of contracts made with the District government where we have what we call retents, or moneys retained—10 per cent of the moneys that are collected.

Mr. CLAYTON. I understand that on local matters appertaining to the District the power of Congress is undoubted and ample for all purposes. We can legislate. In fact, we are the legislature for the District of Columbia, and on all matters have full and ample power; but I understand your proposition is to extend the matter of the trusteeship of the United States to foreign companies and companies other than those that are merely local in their character?

Mr. LARNER. It makes no difference; the money would be held by the District. It makes the proposition practically the same thing.

Mr. STERLING. That would put it in the hands of the Government of the United States?

Mr. LARNER. It can make no difference. It goes to the Treasurer of the United States and he holds it. It may be in the name of the District, but still it would be in the Treasury of the United States.

Mr. CLAYTON. Congress has power to regulate commerce between the States and with foreign nations. This committee decided insurance not to be commerce. Where is our power to deal with foreign companies and insurance companies from the States?

Mr. LARNER. That is a question that I have not given any consideration.

Mr. ALEXANDER. Would not the District of Columbia occupy the position of a State and have the same right to deal with foreign insurance companies that the State of New York has, for illustration?

Mr. LARNER. It would seem so to me.

Mr. ALEXANDER. Is there any doubt about it?

Mr. LARNER. I do not think there can be any doubt about it.

Mr. LITTLEFIELD. Does anybody contend that they would not?

Mr. LARNER. I do not know.

Mr. LITTLEFIELD. Who is the disbursing officer for the expenditures of the District of Columbia?

Mr. LARNER. They are disbursed through the Treasury of the United States by checks drawn by an officer of the District of Columbia, a disbursing officer. He draws the checks on the Treasury of the United States.

Mr. LITTLEFIELD. The disbursing officer of the District of Columbia draws the checks on the Treasury of the United States?

Mr. LARNER. He has an account in the Treasury of the United States and draws checks on that account, and they are paid by the Treasury.

Mr. LITTLEFIELD. What is his designation?

Mr. LARNER. Disbursing officer.

Mr. LITTLEFIELD. And he disburses all the moneys used in the District out of the Treasury of the United States?

Mr. LARNER. Yes, sir.

Mr. LITTLEFIELD. And his accounts are audited by whom?

Mr. LARNER. The Comptroller.

Mr. LITTLEFIELD. The Comptroller of the Treasury?

Mr. LARNER. Yes, sir.

Mr. LITTLEFIELD. Like all other expenditures?

Mr. LARNER. Yes, sir; exactly.

Mr. HENRY. My proposition was this, that under section 79 foreign companies are required to make deposits in the Treasury of the United States to the exclusion of their going to a State of the Union, if they choose to do so, and making the deposit there; in other words, they would come to the District and make this deposit first?

Mr. DRAKE. Yes, sir.

Mr. HENRY. Would that not bring them under Federal control? Do you think they can do that?

Mr. DRAKE. Congress now has the right to do that.

Mr. ALEXANDER. "Foreign companies." That refers to companies foreign to the United States, not foreign simply to the District of Columbia?

Mr. AMES. A "foreign" company means a company organized under the laws of any State outside the District, and a "domestic" company is a company organized under the laws of Congress in the District.

Mr. PARKER. Would you be kind enough to read your amendment to the definition of "foreign," on page 1?

Mr. AMES. I have no amendment to that definition on page 1. I have an amendment on page 1, but it does not affect that definition particularly.

Mr. ALEXANDER. Did you base your answer upon the language in lines 11 and 12 of section 1. "'Foreign,' when used without limitation, includes all those formed by authority of any state or government other than the United States.

Mr. DRAKE. That could be simplified.

Mr. AMES. This is the phraseology of all the States, the large majority of States in the United States to-day. This definition is taken from the Massachusetts law. I interpret "foreign" as explained here. If you are thinking of or designating a company of a foreign country, then at once it becomes foreign with a limitation, and it is a company of a "foreign country," or a foreign company organized in a country other than the United States. I do not know that that answers your question.

Mr. PARKER. If you read this as follows: "'Foreign,' when used without limitation, includes all those formed by authority of any state or government other than the United States," that means that any State insurance company is foreign. If you read it as Mr. Alexander did, it means only foreign to the United States.

Mr. HENRY. Under the insurance laws as they now exist an alien or foreign insurance company must make a deposit in each one of the 45 States of the Union if it undertakes to do business there?

Mr. AMES. No, sir.

Mr. HENRY. It can not do business in Arkansas until it deposits there?

Mr. AMES. That may be so.

Mr. HENRY. They must deposit in every State?

Mr. AMES. I do not think they deposit in every State.

Mr. HENRY. They deposit in every State of the Union before they do business?

Mr. AMES. No, sir.

Mr. HENRY. Well, they have to make a deposit in some States of the Union—it is immaterial whether it is all or not—but under this law these alien insurance companies can make a deposit with the Treasurer of the United States and then it is not necessary under the provision of this act for it to deposit in any State of the Union?

Mr. AMES. No, sir.

Mr. HENRY. Would not that oust the State of the jurisdiction to require deposits?

Mr. DRAKE. That is my understanding.

Mr. AMES. I would like to have Mr. O'Brien state what the ruling is in his State with reference to an alien company making a deposit in the State before it is allowed to do business.

Mr. O'BRIEN. The law in Minnesota is exactly what this law is intended to be—that is, a company that is foreign to the United States can not do business in Minnesota until it has made a deposit either in Minnesota or in one of the States. This bill is intended to follow the ordinary State laws upon that point. If the definition section is not right, it can be made right. In a broad sense, a foreign company is any company that is organized under the laws of a State other than that which is being considered. The Minnesota companies are foreign to the District of Columbia. There is another class of foreign companies that are foreign to the United States. The majority of the States, I think, require no deposit by a foreign insurance company to do business and no deposit to do business in their States except the companies organized in the States, but they do require that foreign companies, that companies of foreign countries, foreign to the United States, before doing business in that particular State shall make a deposit in some State of the Union. That is what this bill provides for the District.

Mr. LITTLEFIELD. To have the assets in this country where they can be reached?

Mr. O'BRIEN. Yes, sir. No company foreign to the United States can operate until it has brought its assets within the requirements of the United States. If you will examine this bill in detail, you will find that there is not a single State right or a single privilege

that any State has that is interferred with or can be taken away by this bill. The beauty of this bill, if there is any beauty, is that it leaves every State in absolute control of the situation with regard to its own affairs.

Mr. BRANTLEY. Under the present law your State can require a deposit from a foreign country, or it can permit the foreign country to do business if it has a deposit in another State?

Mr. O'BRIEN. Yes, sir.

Mr. BRANTLEY. And you can require a deposit in your State, notwithstanding there is a deposit in another State? If you pass this law you can not do that?

Mr. O'BRIEN. Yes, sir. I believe the Federal Government has not the power to say what regulations the State of Minnesota shall make with regard to their insurance companies, and unless the Supreme Court of the United States is reversed, an insurance contract is not interstate commerce, and you can not take my rights away from me as insurance commissioner unless you reverse the Supreme Court, and this bill does not purport to do anything of that sort, but it purports to legislate for the District of Columbia and to put the large department which it is proposed to organize at my disposal if I see fit to avail myself of it.

Mr. STERLING. It says, in line 11, section 79. that the company "shall not be admitted until"—that is, admitted to do business in the District of Columbia?

Mr. O'BRIEN. Yes, sir; absolutely. We had that very question before the committee of insurance commissioners on March 20. One of the commissioners, realizing the difficulty of examining a foreign insurance company and realizing the facilities that the United States Government would have through its consular department, advocated the drafting of this section in such a way as to exclude a company from the United States unless it complied with the law, and personally I expressed the opinion that the Federal Government had not the power to do that; that if the Federal Government can not regulate insurance between the States it can not regulate it between the United States and foreign countries. If it is not interstate commerce you can not regulate it so as to exclude my rights.

Mr. LITTLEFIELD. If it is not interstate commerce, it is not foreign commerce?

Mr. O'BRIEN. No, sir; and if it is not commerce that ends it.

Mr. DRAKE. Just a word more, Mr. Chairman. I would suggest that in order to save this confusion—the terms do not seem to be understood—you should adopt the terms that are now used by the District of Columbia insurance department, which designates the companies that are chartered by special act of Congress and those under general laws as local companies, and designates those chartered in the States as domestic companies, and those organized outside the territorial limits of the United States as foreign. There can be no mistake about it if those terms are used.

Mr. PARKER. Who comes next, Mr. Ames?

Mr. AMES. I would like to have Mr. Crouse, the commissioner of Maryland, who is also one of the commissioners on the subcommittee on insurance, address the committee.

**STATEMENT OF MR. BENJAMIN F. CROUSE, STATE COMMISSIONER
OF INSURANCE OF MARYLAND, OF BALTIMORE, MD.**

Mr. ALEXANDER. Give to the reporter your full name and address and business.

Mr. CROUSE. My name is Benjamin F. Crouse, commissioner of insurance of Maryland; official residence, Baltimore. My home is Westminster, in Carroll County, Md.

Mr. PARKER. Proceed, sir.

Mr. CROUSE. I think there has been some misapprehension, judging from the questions that have been asked by the committee of those who preceded me in appearing before the committee. It is my understanding of this bill, after a very careful examination of it, and after having heard the arguments concerning it at Chicago, and inquiring into it myself, that this bill is for the jurisdiction of the District of Columbia, to be enacted by the only legislative power that there is to enact legislation for the District of Columbia; and therefore when we are talking about a bill to be enacted by Congress we are apt to confuse terms and get the idea that that bill is necessarily Federal, simply because the Federal Congress is the legislative power that enacts legislation for the municipal government of the District of Columbia.

Now, I think in enacting this bill, if the Congress should do it, it would simply apply to the District of Columbia as a jurisdiction in which the insurance business is transacted; that the bill of itself has no effect whatever upon any State in the Union unless the commissioner of that State or the superintendent of insurance of that State desires to use such provisions of the bill as are adapted to the conditions of his own State, just exactly as he now uses the provisions of the laws of those States of the Union which have laws on the subject of insurance whenever he so desires, as a mere matter of comity between the States. For instance, suppose a company coming into the State of Maryland from the State of Minnesota—the State of my friend O'Brien—I have a perfect right as the commissioner of the State of Maryland to examine that company before I admit it into the State of Maryland; but instead of that I can call upon the commissioner of the State of Minnesota and ask him for an examination, and that can be sufficient and is sufficient, if I am satisfied with it, to admit the company from Minnesota into the State of Maryland.

Now, suppose likewise there was a company here in the District of Columbia—whether it is a foreign company or a domestic company or a local company, as my friend Drake chooses to distinguish—if it were doing business here and was not admitted to the State of Maryland, but offered to do business there, I would call upon Mr. Drake, the commissioner of the District of Columbia, or I need not call on him, just as I choose. I could examine into the affairs of the company myself if I wanted, or if I wanted I could call upon Mr. Drake to examine that company, and it would be sufficient, so far as the deposits are concerned, if the deposits are made here and held here. I do not care whether you use the technical term “in trust” or not. In case the company failed, so that it could not be reached by suit, this money would be on deposit here for the benefit of the various States of the Union, and they could use that sum

to meet such losses as the company would have in those various States.

The point about it is this: That this bill is not meant to interfere with the legislation of the States. The expression from this committee, as I understand it, is that the United States has no power of Federal regulation as a Government over the insurance business, because insurance is not commerce. But this particular law would stand exactly in the same category as the law of any other State would stand with respect to transactions in another State. We are not bound at all.

I want to say this to you: I think the very first question that was raised by Mr. Littlefield and by other gentlemen upon the committee was as to what was meant by the section—I think it was section 5, or 6 possibly, of this bill—in respect to the examination of other companies. It simply meant this, as I understood it: The States have no means of examining foreign companies. For instance, suppose a company desired to come into Maryland from England—

Mr. ALEXANDER. You are speaking of foreign companies as outside the Government of the United States?

Mr. CROUSE. Yes; as outside the jurisdiction of the United States. I do not think that any other construction was considered, so far as the convention was concerned. While "foreign" does mean that which is not in the District of Columbia, no matter where it may be in the country, I do not think it is clear in that section, if the word "foreign" is used in that particular sense in that section.

Suppose a company desired to come in from a foreign country outside the lines of the United States, to do business in the State of Maryland. I might say: "I must have an examination of that company." I have no means of examination, as you say, because I have no agents in foreign countries to examine into this. But the United States is so situated that it does have a consular service in the various countries on the face of the globe, and therefore it can call upon one of its own officials. It is so fixed and constituted that it can do that. A State could not do that.

Now, the idea was that if you could get the States to agree, by this code of uniform legislation, that when a foreign country should come into this country to do business we as States—not the United States Government—should say: "You should be admitted to the District of Columbia first," but that I, as commissioner of Maryland, should say: "You must be examined by the District of Columbia before you can be allowed to enter the State of Maryland." I would state that, however, under the law of the State of Maryland, and not under the law of the United States at all.

Mr. ALEXANDER. May I ask you a question simply for my own information? How do you examine or get at the standing of a foreign company—the London, Liverpool and Globe Fire Insurance Company, for instance?

Mr. CROUSE. I must confess I do not know; and there is no means or power or authority to do it given to the States whatever.

Mr. STERLING. Why not?

Mr. CROUSE. We could send agents, unquestionably, to England to examine into the affairs of that company.

Mr. GILLET. Could you not exact from the London-Liverpool Company that they should deposit in Maryland an amount sufficient to protect the people?

Mr. CROUSE. Certainly; we could do that.

Mr. ALEXANDER. Do you do that?

Mr. CROUSE. No, sir. We do not do that. The point of deposit, I would say, is that where the amount required by the various States is deposited in some place within the United States. We are always satisfied that that is sufficient.

Mr. GILLET. When they have made a sufficient deposit that satisfies you?

Mr. CROUSE. No; that is not necessarily the case. We have a perfect right, notwithstanding their deposit, and in many instances we we do that very thing—examine into the affairs of a company to ascertain its condition, or ascertain it from some State where they are transacting business and where an examination has been made. We call upon that State for their certificate of examination made of the company.

Mr. STERLING. Don't you want to know with reference to the expenditures, or salaries, or things of that kind?

Mr. CROUSE. Certainly; we could examine into all the affairs of it.

Mr. STERLING. Do I understand you to say under this section 5 or 6, that the State commissioner—

Mr. CROUSE. Page 6—

At the request of the commissioner of insurance, or other officer having similar duties, of any other State, and with the consent of the company, he shall make such examination of any company not authorized to do business in said District.

Mr. STERLING. Do you think that just applies to foreign countries, and foreign with respect to the United States?

Mr. CROUSE. So far as I am concerned, that is my understanding.

Mr. STERLING. Would you not say that it would be as well if that section does not include the thought of the companies organized in other States, as, for example, Massachusetts or New York?

Mr. CROUSE. The State of Maryland could do that if it desired to do it. But I do not mean that this particular law shall compel the State of Maryland to be satisfied with the District of Columbia examination, or the examination of any other State, unless I want to be satisfied. That is a matter entirely with the particular State where the company is applying to be admitted. I do not understand this law is to take away any power or authority or right whatever of any particular State, as, for instance, my own State of Maryland.

Mr. GILLET. It would have this effect, that if the State were satisfied, and the commissioner and clerks working with him, they would request the examination made of the company in some other State, and thus save labor and expense?

Mr. CROUSE. That is all.

Mr. GILLET. Is it not the intention, then, to have under Federal control the supervision of all these companies for the purpose of ascertaining just how they stand, so as to inform the various States, and take the supervision and control away from the States?

Mr. CROUSE. The term you use is apt to be confused again. It would not be Federal control or supervision in the sense that the Federal Government would do it. No. We simply thought we would designate some particular place, as the District of Columbia, just as we might designate the State of New York or the State of Minnesota or the State of Maryland, for convenience sake.

Mr. HENRY. Why did you not take it to some State legislature?

Mr. CROUSE. I did not prepare the bill.

Mr. HENRY. If you did not want to have Federal control, it seems to me some State legislature could set the example just as well.

Mr. CROUSE. We are trying to arrive at a uniform code of legislation for adoption by the States. This bill does not apply to any State in the Union. We are now preparing a code of laws looking to uniform legislation to be adopted by the various States of the Union, by which we can possibly conform to the provisions of this bill; laws just like this bill, although this bill is for the District of Columbia alone; so our laws would be for the various States alone. For instance, the law adopted by Maryland could not bind my friend O'Brien, of Minnesota, and a law passed by the State of Minnesota could not bind me as commissioner of insurance of the State of Maryland. But if Mr. O'Brien and myself, as commissioners of those States, agree under the rule of comity between the States that we will be satisfied with the examination, for instance, I in his State and he in my State, that is a matter that we can do now under the law. That is all. But that is not because Mr. O'Brien's law covers the State of Maryland, but it is because I choose to apply and use in Maryland the regulations which Mr. O'Brien adopts under the law of his State.

Mr. CLAYTON. Does this bill go no further than that?

Mr. CROUSE. It goes no further.

Mr. CLAYTON. What is the use of having this enacted, if it confers no further power?

Mr. CROUSE. If we had a uniform law, maybe it would not be in it.

Mr. GILLETT. You say you want a uniform law?

Mr. CROUSE. Yes.

Mr. GILLETT. Do you suppose you could get the State legislature to pass this measure:

At the request of the commissioner of insurance, or other officer having similar duties, of any other State, and with the consent of the company, he shall make such examination of any company not authorized to do business in said District.

Do you suppose New York, for example, would consent to legislation of that kind?

Mr. CROUSE. I doubt it very much.

Mr. GILLETT. Do you think the State of New York would be content to make the examinations at its own expense?

Mr. CROUSE. I doubt it.

Mr. GILLETT. Then your idea is to lay the expense on the Government of the United States?

Mr. CROUSE. No. If the company applies to Maryland to be admitted and I say, "I want to examine into your affairs before you can be admitted," that expense is at the cost of the company.

Mr. GILLETT. You are requiring a large number of officeholders here, and that expense must come upon somebody.

Mr. CROUSE. Yes; that is true.

Mr. FRICKE. Do you think the laws that have been passed in the State legislatures are correct?

Mr. CROUSE. I do not say I would like them, but I would not agree with all of them.

Mr. FRICKE. Would they be sufficient as an example to adopt uniform laws?

Mr. CROUSE. A number of them are very good bills, and possibly may remedy some of the evils which have been criticised and talked about a good deal within the last six or eight months.

Mr. FRICKE. Would you be willing to have them adopted by your State?

Mr. CROUSE. No, sir.

Mr. FRICKE. If this were enacted into law either some of the States would be compelled to change their laws or the companies of New York would be compelled to withdraw from the District of Columbia?

Mr. CROUSE. I think you are right about that, Doctor.

Mr. GILLET. That would be Federal supervision, would it not?

Mr. CROUSE. No, sir. I do not think there is any idea of Federal regulation or supervision.

Mr. CLAYTON. If there is no Federal supervision or control of insurance companies in this bill what do you want with it? I want to know the object of it.

Mr. CROUSE. Not to give you a short answer——

Mr. CLAYTON. You can make the answer as short or as long as you please.

Mr. CROUSE. I only want to say I want to be extremely polite and answer as far as I possibly can. I can say to you in answer, I do not know that I want it at all. I am only talking about the bill, or the provisions of the bill. The only bill I want, possibly, when it comes, is such a bill as I may approve of personally before the legislature of my own State. I hope and trust that we shall be able to bring about a uniform system of legislation in the various States of the Union, because if we have a good bill in Maryland I see no reason why it could not be a good bill in the State of Alabama or Minnesota or some other State; but so far as the National Government's control of insurance goes I am opposed to it. I see no reason for it, and I would not stand here for a moment except in opposition to it.

Mr. BRANTLEY. Are you here advocating its passage?

Mr. CROUSE. I am here in this position toward the bill: This is the first bill that was drawn looking to the idea of uniform legislation. We had this under consideration at the convention at Chicago, and we tried to get it to meet the approbation of the committee there; without changing the spirit of the law, we added some words and changed some sections, but we did not undertake to interfere with the philosophy or science or spirit of the particular bill. This is the first bill, I will say to you, that has come up to us in codified form, and it comes as near being correct as any bill that we know of at the present time.

Mr. BIRDSALL. Then, I understand you favor its passage?

Mr. CROUSE. Certainly.

Mr. BIRDSALL. But you are indifferent as to whether it passes or not?

Mr. CROUSE. I say I have no more interest in it in the District of Columbia than if it were in the New York legislature or in the legislature of some other State. The idea is to get what this bill looks to—namely, uniform legislation in the States.

Mr. CLAYTON. If this bill should be enacted into law, what specific benefit would you, as commissioner of the State of Maryland, or the policy holders there, derive from it?

Mr. CROUSE. None whatever, sir, unless we choose to use the provisions of it, just as I have mentioned I might do a moment ago. It would not necessarily apply to my State at all.

Mr. CLAYTON. What provisions would you use?

Mr. CROUSE. Suppose a company was doing business in the District of Columbia which was not doing business in the State of Maryland, and it applied there to do business; I could call upon Mr. Drake here for information.

Mr. FRICKE. Can you not do that now?

Mr. CROUSE. Certainly. Therefore that provision is not new. He can hand me a certificate of examination, and that will be sufficient for me.

Mr. CLAYTON. What additional power would this bill confer on you that you have not got already?

Mr. CROUSE. Nothing.

Mr. CLAYTON. Why, then, do you want to enact this provision?

Mr. CROUSE. Because they say the laws of the District of Columbia are deficient as a local measure.

Mr. CLAYTON. Then it does not benefit you directly or indirectly?

Mr. CROUSE. That is my conception of it.

Mr. ALEXANDER. You were asked a moment ago by a gentleman whose name I do not know—

Mr. CROUSE. Doctor Fricke, ex-superintendent of the State of Wisconsin—

Mr. ALEXANDER. Whether, if this bill were made a law governing the District of Columbia, some of the New York insurance companies would not have to go out of business in this District.

Mr. FRICKE. All the New York life insurance companies would be compelled to withdraw.

Mr. ALEXANDER. Yes. I would like to know why.

Mr. CLAYTON. I do not know but that it would be a good idea to put the three "grafting" companies out. I would favor it if I thought it would do that.

Mr. CROUSE. Doctor Fricke referred to a rule for the valuation of policies. What do you refer to, Doctor?

Mr. FRICKE. I do not want to break in on you now.

Mr. ALEXANDER. What did Doctor Fricke say?

Mr. CROUSE. He said he did not want to break in. If there is a provision in the New York legislation or in this particular bill which differs as to the regulation of companies, and companies in New York State, say, do not want to comply with the provisions of this bill, but prefer the provisions of the law of that State, they could not do business in the District of Columbia; that is all.

Mr. PARKER. Is there any provision in this bill with reference to foreign or domestic companies? I have been asking Doctor Crouse—

Mr. CROUSE. Do not accuse me of being a doctor. I happen to be a lawyer. [Laughter.]

Mr. PARKER. I was going to ask whether there was any particular provision in this bill, after the amendments you have suggested, that would interfere with the ordinary line of life insurance companies in the State of New York doing business in the District of Columbia?

Mr. CROUSE. I should like very much to give you an answer to that if I were entirely conversant with the recent bills that have passed

the New York legislature, but I have not seen the bills as they were amended and passed. I saw the original draft of the bills, but I am not thoroughly versed at all in the provisions that have passed with the various amendments to them.

Mr. PARKER. Have not the recent amendments very much changed the provisions which provide for anything except purely District corporations?

Mr. CROUSE. Yes.

Mr. PARKER. Is it the purpose of leaving the field free for any corporations except for purposes of examination?

Mr. CROUSE. Yes; except as these things have to be done, just as Mr. O'Brien says. It would be useless, if the company were coming from the District of Columbia into Maryland, if they had been examined by Mr. Drake—it seems to me it would be useless trouble and expense for me to say as commissioner of Maryland, “I want to examine that company,” because in five minutes I can telegraph to Mr. Drake and find out whether that company is properly admitted into the District of Columbia, and I can admit it to the State of Maryland. That disposes of the whole thing, and therefore on assurance of that kind it might be of benefit to me to use it.

That is all. I am not compelled to do it, you understand. It is a mere matter of convenience.

Mr. BIRDSALL. Let me call your attention to section 2:

That all insurance companies now or hereafter incorporated by authority of any general or special law of Congress shall be subject to the provisions of this act, and to such laws as may be hereafter passed affecting or altering their corporate rights or duties or dissolving them. All foreign insurance companies, as a condition of transacting any business of insurance within the District of Columbia, shall be subject to the provisions of this act.

“All foreign insurance companies,” I take it, means——

Mr. CROUSE. Outside the District of Columbia.

Mr. BIRDSALL. Shall be subject to the provisions of this act?

Mr. CROUSE. Yes, sir. For instance, let me show you what that means. Up to within a short time our own State had no provision covering the particular time when companies should account and report and distribute dividends. The last legislature adopted a law stating that no companies should do business in Maryland issuing policies participating in the profits or surplus which should postpone the accounting and apportionment of its dividends and surplus for a period longer than five years. Suppose there was no such provision in this law here——

Mr. BIRDSALL. Supposing there were something of another character which conflicted with that?

Mr. PARKER. I desire to ascertain the pleasure of the committee with reference to the question of recess—whether it is better to take a recess now, from 12 o'clock until 2, or wait until 1 o'clock and then adjourn until 2. I make this suggestion because of the fact that we may be called upon shortly to vote in the House.

Mr. AMES. Mr. Chairman, in connection with this I would like to state that these amendments that I have been unable to reproduce for you can not be had until 3 o'clock this afternoon, and I am very much interested in them, because they answer these questions that are being brought up limiting these provisions to local companies. It might be well to take our recess until I can present these amendments.

Mr. PARKER. Until what time?

Mr. AMES. Until 3 o'clock.

Mr. PARKER. I am not desirous of holding meetings that are not well attended by members of the committee. It is fair to you gentlemen, who are men of ability, actuaries of companies all over the United States, that we should give you a full hearing. I wanted to get the opinion of the committee as to whether we should go on before Mr. Ames brings in his special amendments, which the members and myself are ready to hear, or whether we shall adjourn now.

Mr. ALEXANDER. I suggest that we hold until half past 12 and give Doctor Fricke time to answer that question, and then adjourn until 3 o'clock this afternoon.

Mr. PARKER. It is moved, gentlemen, that Mr. Fricke be asked to reply to suggestions already made until half past 12, and that at that time we adjourn until 3 o'clock.

Mr. STERLING. Why not 2 o'clock?

Mr. PARKER. The amendments which Mr. Ames suggests would cut out many questions that otherwise might be propounded to Doctor Fricke.

Mr. AMES. They will answer many questions.

Mr. PARKER. It is moved and seconded that Doctor Fricke proceed until half past 12 and that we then adjourn until 3 o'clock—or is it 2 o'clock, Mr. Ames?

Mr. AMES. I should prefer 3 o'clock.

Mr. PARKER. Very well. The motion is carried.

Mr. AMES. Let me introduce Doctor Fricke.

Mr. CROUSE. I am very much obliged to the committee.

STATEMENT OF MR. WILLIAM A. FRICKE, OF NEW YORK CITY.

Mr. FRICKE. Gentlemen of the committee, I said that if this code were enacted into law as it is presented in this printed bill, No. 18804, the New York life insurance companies would be compelled to withdraw from the District of Columbia until such time as they could secure amendments to the New York insurance laws.

The provision in this code as to the election of directors in mutual life insurance companies is radically a different plan from that enacted in the New York statute. The law provided in this code for standard-policy forms would subject the New York companies, if they attempted to comply with it, to prosecution under the antidiscrimination law of the State of New York, since the standard-policy law in New York fixes the basis of values on lapses or surrenders after three years, and this bill fixes it at two years, so that immediately the charge could be brought against the New York companies that they are discriminating against New York policy holders.

It would be necessary to amend this law in many other particulars to enable outside companies to remain here. I drafted a review of this bill, which was published in one of the insurance journals, and at the request of the chairman I have mailed a copy of the review to each of you gentlemen, so that I will now not discuss any point raised in that review. However, I will hand to the stenographer a copy of that review.

There are serious objections to the enactment of this law, and I trust that my friends the insurance commissioners will not look

upon what I say as criticism of any particular individual who now holds the position of insurance commissioner. I held it once myself, and the qualification that is defined in this law for an insurance commissioner is not that he should have a knowledge of the business, but that he shall not be a stockholder or officially interested in any insurance company. If he does not own any stock, if he is not officially interested in an insurance company, the presumption is that he has the necessary qualification to fill the job.

Now, the necessary qualifications in my own State—in Wisconsin—are to get the delegates in convention and then to get the votes on election day. [Laughter.] Kansas did have a provision at one time requiring that the governor of that State should appoint a man well versed in the business of insurance, but after they had had a term served by a man by the name of McNoll they repealed that provision of the law. Ohio has had a provision like that in the law, and yet it has never been lived up to; and without casting any reflection upon any former governor of the State of New York, I am not ready to believe that a greater qualification would be demanded under this bill than when the President appointed the recent insurance commissioner in that State. So that unless you would provide in this law qualifications for the incumbent that would insure to people of this District and this country better service than they are assured in other States, there is no reason why the examination made by the commissioner of the District of Columbia should be worth any more than an examination made by any other superintendent in this country, and the commissioner has already authority to accept examinations made by some other commissioner.

As Mr. Crouse said, he would accept the certificate of Commissioner O'Brien. But if a Maryland company applied to the State of Minnesota, Commissioner O'Brien would hardly ask the insurance commissioner of Illinois to go and examine the Maryland company. Now, if he would not do that, why should he ask the insurance commissioner of the District of Columbia to butt into Maryland and examine a company there?

This law provides in one place that the insurance superintendent of this District shall accept the foreign statement—the statement of the United States branch of a foreign insurance company—and then in another place it goes to work and authorizes him to go over and examine the foreign company in its own country. Now, to all intents and purposes, the foreign branch of a foreign fire insurance company is a separate and distinct company in this country. We ask them, under the laws of any State in this Union, to put up a necessary deposit with the State, and then we compel them to keep on hand a larger reinsurance reserve than they are compelled to keep in their own country, and they can not withdraw their deposit until all the liability under every policy issued has been done away with; so that to all intents and purposes it is a United States company, and when the insurance commissioner of a State desires to know whether that company is insolvent, he goes and examines the United States branch.

Mr. CLAYTON. It confers a new duty upon some Federal official, does it not?

Mr. FRICKE. Without asking that foreign company to file its home-office statement with the District; it does not ask the foreign com-

pany to file its home-office statement. All it requires is its United States branch statement.

Now, section 2, which has been called to your attention, requires all companies licensed here to be subject to the provisions of this act.

Mr. PARKER. Gentlemen, I am sorry to say that it is the second roll call, and they lack a quorum in the House, and therefore we will now take a recess and resume at 3 o'clock this afternoon.

(Thereupon, at 12.35 p. m., a recess was taken until 3 o'clock p. m.)

AFTER RECESS.

The committee, pursuant to recess taken, reassembled at 3 o'clock p. m., Hon. Richard Wayne Parker in the chair.

STATEMENT OF MR. WILLIAM A. FRICKE, OF NEW YORK CITY— (resumed).

Mr. PARKER. The committee will come to order. I believe that Mr. Fricke broke off in the midst of his remarks.

Mr. FRICKE. May it please the committee, Mr. Ames handed me a copy of his amendment, and in the proposed bill have been incorporated a number of suggestions made, but the proposed law is not yet by any means a model code.

A large part of this code is taken up in proposing a plan or method for the election of directors which radically differs from the plan proposed in New York, and while the amendments accepted by Mr. Ames now make this method applicable only to mutual life insurance companies organized in the District of Columbia, it is useless to adopt that provision for the simple reason that there will never be any opportunity to make use of it in the District of Columbia, because another portion of the code, which provides or claims to provide for the organization of mutual life insurance companies—that part of the law should properly be denominated "An act to prevent the organization of mutual life insurance companies," because in the first place it requires just as much capital—\$200,000—for the organization of a mutual life insurance company, and in addition to that, 1,000 subscribers for at least \$1,000,000 of insurance, each of whom has paid in one full annual premium.

Now, I did have seriously an idea that Washington would be a grand place to organize an ideal life insurance company, but I have changed my opinion considerable about that. If I were going to organize a life insurance company in the District of Columbia I would organize it as a capital stock company, and then I would go on and try to do business and try to get my policy holders afterwards.

New York does not ask quite as much. They require only \$100,000 and 500 subscribers, and in another portion of this law it requires of companies transacting business in the District of Columbia to have the same amount of capital required of domestic companies. That is section 77, page 104. You can find that by just turning over the bill while I am talking about this. It provides—

SEC. 77. That no foreign insurance company admitted to do business in the District of Columbia shall be authorized to transact any kind of business therein which is not permitted by this act or to transact more classes or kinds of insurance therein than is permitted by this act to any domestic insurance company, unless its capital stock is at least equal to the aggregate capital stocks required of domestic companies authorized to do said several kinds of insurance.

Under this section the Equitable Life, which has a capital of only \$100,000, would be excluded from the District of Columbia, because the District of Columbia requires of life insurance companies a capital of \$200,000. So that unless you are going to enact a law which will make it possible to organize mutual life insurance companies in the District of Columbia, you are wasting your time in drafting a long patented method of electing a directorate which may never exist.

Let me say, Mr. Chairman, if you please, that from what experience I have had, a model code, a code which would be looked upon as a model, would be one which very largely restricts itself to the most stringent and effective measures governing the organization of companies in the District of Columbia, so that when they go out and transact business the equity and benefit which they confer will carry the information to the people of the country that the law under which they are organized and under which they are supervised must in fact be a model code.

You will perhaps remember that was largely the case with the Massachusetts companies when the law of net valuation was enacted in Massachusetts, followed in 1861 by the enactment of a nonforfeiture law, the first in this country. Although that law applied only to the companies organized in Massachusetts, they went out and educated the people as to the equity, as to the fairness, as to the benefits conferred by insuring in the Massachusetts companies, and if there had not been a nonforfeiture act passed in any other State, competition would have forced other companies to do equity to their policy holders, and it was by reason of that one law alone that Massachusetts companies for years were pointed to, and their agents argued that they were better than other companies. If you want an ideal code in the District of Columbia, you must confine yourselves very largely to an insurance department where real ability shall be necessary to secure stringent supervision and effective requirements as to the organization and management of your home companies.

The law governing standard policies has been amended in some particulars, and not in the policy forms themselves. If the standard forms are enacted, New York companies will have to issue those forms in the District of Columbia. There will be eight standard forms, provided the insurance superintendent of New York accepts the standard forms as standard which this code provides for. Yet there still is that difference of two and three years as to values.

In section 4, on page 3, as to the publication of assets, which makes it a misdemeanor for the company to publish in its annual statement as to its assets or liabilities sums other than those passed upon by the superintendent of insurance, that section requires amendment so that it may be definitely understood, because the Maryland commissioner may receive the same annual statement that the insurance commissioner of the District of Columbia receives. He may disallow certain assets in that report, and then the figures will differ. If the company publishes those assets in Baltimore according to the findings of the Maryland commissioner, somebody might inadvertently bring some of those statements over here to Washington, and differing, as they would, from the District of Columbia, the company may incur a penalty.

Now, as to examination, the law on examinations, although amended, has not been improved at all, and this thought comes to me: When I remember what my friend, Mr. O'Brien, of Minnesota, said this morning, that he had 502 insurance companies in Minnesota, and that he was wholly unable, by reason of lack of time and necessary help, to give them proper supervision, it seems to me there is not an insurance commissioner or insurance department in the country that can not give to his own home companies all the time, all the supervision that is absolutely necessary for him to give in order to know without any question just what is the condition of each company in his State; and if each commissioner in his own country did that as to his own home companies, the Minnesota commissioner would not be called upon to supervise 502 companies.

Then, again, it is not necessary for a commissioner of any other State to request the insurance commissioner of Washington to make an examination, because under the law the insurance commissioner has authority to appoint all the help necessary to make an examination; and I think, in fact I know, I would feel that way, if I was still insurance commissioner of Wisconsin, that if Mr. O'Brien sent the Washington commissioner into Wisconsin to examine a Wisconsin company it would be rather slighting the Wisconsin department. However, if he went down to New York and engaged expert accountants, which he would have the right to do under his law, and should send those expert accountants into Wisconsin to examine the company, there could not be any possible objection.

Mr. AMES. May I make an interruption, or would you rather not be interrupted?

Mr. FRICKE. Go ahead; go right on.

Mr. AMES. If you will look on page 80 of your bill and read from there down, you will see that a company might come into this District and issue a standard form other than those prescribed.

Mr. FRICKE. Yes, sir; and you are placing no requirement upon the commissioner as to a knowledge of insurance; but you would require me, if I desired to issue another standard form, to submit that standard form to the commissioner in the District; and the commissioner goes to work and notifies every company, and they come in and have an inquest upon my form, which I submit, which may have taken me years to formulate and to which I may have given the study of years to perfecting a contract which I desire my company to issue; and I have to submit my formulas and tables and must tell everybody how it is possible for me to do these things. The commissioner under your law is not required to know anything about insurance, and God knows, I have been in the thing myself, and when you find any commissioner who knows anything about insurance it is a political accident, and they try to correct that mistake as soon as possible. [Laughter.] They change this contract, and then everybody is at liberty to use it, and, as I said in the printed review of this bill, if the patent laws of the United States had provided nothing further as an encouragement to American inventive genius than to issue a certificate and say "This is a patent" and then allowed anybody to infringe upon it, it would have shut the doors against all ingenuity and there would probably be as many patents issued by the United States Government as there would be mutual life insur-

ance policies under this act. There are not enough philanthropists in the country to organize them. [Laughter.]

I do not like to take up the time of this committee by calling attention to every section, but I would prefer, Mr. Chairman, to have written out and mailed to you my observations.

Mr. PARKER. I would say for myself that as to important points I would rather hear than depend upon reading.

Mr. FRICKE. Then let me call your attention to one provision in the insurance code. Turn to page 117. Remember this is a code of insurance laws. Section 108 says:

That no corporation doing business in the District of Columbia shall, directly or indirectly, pay or use, or offer, consent, or agree to pay or use, any money or property for or in aid of any political party, committee, or organization, or for or in aid of any candidate for political office or for nomination for such office, or for any political purpose whatever, or for the reimbursement or indemnification of any person for moneys or property so used.

You will observe that it does not say there "No insurance corporation," but it says "No corporation." Now, the purpose of that section may be a good one. It is questionable, however, whether you want to regulate all the corporations that are doing business in the District of Columbia in this hidden-away section in an insurance code.

Again, section 98, page 114. That provides—

That an insurance company which, within or without the District of Columbia, insures upon a single risk a larger amount than the law permits shall be punished by a fine of \$500.

Now, that would authorize or give the superintendent of insurance of the District of Columbia authority to punish some company for something that they had done up in Alaska or in California.

Another section of this act permits the insurance commissioner of the District of Columbia to subpoena anyone—an officer, agent, or anybody else—whose testimony he may deem necessary; and although the man whom he subpoenas may be in New York City, and may know nothing about the subject-matter upon which he is to be examined, yet if he neglects that summons he is punishable under this law.

Then there is another provision that I desire to call Mr. Ames's attention to, and also the committee's attention to, and that is in section 22, covering the capital stock required of insurance companies. A section of that kind, Mr. Chairman, should be as near as possible uniform with the requirements of other States. Now, the capital required under this code differs very materially from the capital required in most of the States as to different classes of business, and in one particular no provision is made—in lines 6 to 10, inclusive—for capital required of a company organized to do a fidelity or burglary or theft insurance business. There is no provision there for a capital requirement, although a little further on it provides that a company desiring to do business under the fourth, or the sixth, or some other number, may be organized jointly by putting up that capital.

Mr. AMES. Will you permit another interruption?

Mr. FRICKE. Yes.

Mr. AMES. You state that the amount of capital required should be as near uniform as possible, and you say that the large majority of the States do not have these limitations?

Mr. FRICKE. Yes, sir.

Mr. AMES. Is it not also a fact that a large majority of the States do not have good insurance laws?

Mr. FRICKE. They have as good insurance laws as this. [Laughter.] I do not know of any State that has been admitted into the Union for any length of time that has insurance laws that would not double discount this one. [Laughter.]

Mr. AMES. I have no doubt of it; but Massachusetts and New York and Illinois and Connecticut and Rhode Island and New Jersey, you will find, all embraced practically within those few lines the requirements in regard to capital stock—

Mr. FRICKE. So that, Mr. Chairman, with the printed review that I have mailed to the members of your committee, that is really all that I have to say, and I will give way to some of the other gentlemen, unless some members of your committee desire to ask me some questions.

Mr. BRANTLEY. I would like to ask you, Do you think this bill could be perfected so that it would be a good bill?

Mr. FRICKE. I believe, sir, if you appointed a smaller subcommittee, or referred this bill to a commission of three or four to report at the next session, that that commission could present to you a code which would be about one-third as large as this and, so far as the organization and supervision of domestic companies are concerned, it would be a model which other States would be glad to follow. So far as the supervision of companies of other States is concerned, that is not a difficult proposition. It is difficult, however, to figure out of this code that which does and that which does not apply to companies of other States.

I want to pay Mr. Ames this compliment, that no man has been more ready and more willing and more anxious to present a perfect measure, to listen to arguments, and accept suggestions than he has been; but notwithstanding that fact, the effect of this code, gentlemen, if enacted into law, would be that any company organized in the District of Columbia would be discriminated against when it goes into all the States, and companies of other States will hardly be able to comply with your laws. Instead of its being a discredit for them not to come in, it will be to the credit of the company's management not to come, but to stay out. [Laughter.]

Mr. PARKER. A good deal has been said here about the advantage of having a proper law for United States supervision of the assets of insurance. I do not mean supervision in the sense of control, but simply supervision in the sense of going over them and finding out about their assets, and so forth, before allowing them to come to the District of Columbia and do business. It has been suggested that it would save money and enable one single investigation to answer the purposes of many. What have you to say as to that? Is a bill providing for a supervision of that sort, or an insurance officer or commission to do that, advisable?

Mr. FRICKE. I can only give you my own personal view on that matter. A view which may differ very much from the views of several of the other gentlemen present. I myself believe that but few simple regulations are necessary wholly to revolutionize the business of life insurance in the interest of the policy holders. This bill does not provide that, although the conference in Chicago recommended that.

This bill leaves wholly the deferred-dividend policy holder, who constitutes now 80 per cent of all the business outstanding, without any protection at all. It prohibits the deferred-dividend contract in the future, but it does not accept the recommendation of the Chicago convention that on all the deferred contracts heretofore issued there shall be an annual accounting and apportionment to the policy holders. And the more you read the testimony of the New York investigation, the more you will become convinced that one great evil in life insurance was the unaccountability of company management as to all the funds intrusted to their care; that that unaccountability engendered an extravagance which made possible all the things which are subject to criticism.

One of the chief recommendations of the Chicago conference was that upon all of these policies—whatever may be done in the future, I do not believe it would be necessary even to prohibit them, although the Chicago conference did believe that—they took the position that upon the contracts outstanding there should be an accounting and apportionment. And if that were the case, every policy holder, year by year, would have placed in his hands the greatest test of merit which can be placed upon company management. Competition between companies would resolve itself into showing results for the policy holder. It would be the greatest check upon extravagance. It would be the greatest means toward conservatism and economy.

If you provide in a proper law for such an accounting, it would be necessary for you to determine what constitutes divisible assets. Under this law, taking no consideration of the 80 per cent of policy holders who hold deferred-dividend contracts, the result will be that those deferred policy holders in the future will be in a worse position than they ever were in before, because the merit of the company from January, 1907, on, will be graded by returns which are made to the annual-dividend policy holders.

The law of the State of New York and this code builds a high, big fence around the deferred-dividend policy holder. None can get out except at a loss, and none can get in. It does not make any difference what the settlement is that is made to these deferred-dividend policy holders at the end of their deferred period. No other insurance company could get such a policy anywhere; they do not issue them any more, and the result will be that the deferred-dividend policy holders that are in will have their funds exploited in order that these companies having a large volume of deferred-dividend business on their books can make a showing against the purely annual-dividend companies.

Now there is one of the essential recommendations, one of the most important remedies for existing evils, which has been entirely overlooked in the code; and were you to place in your code a provision of that kind, that there shall be an annual accounting and apportionment made to each policy holder, it would be necessary for you to define in your law how the company shall arrive at what constitutes divisible surplus.

It is hardly fair to say as to a life insurance company that surplus is an excess of assets over all liabilities. I think there was a carefully drawn line providing that as the reserve must be compounded at a certain rate of interest, the asset value of all securities and dividends

of the company must be on such a basis as will net to the company at least that interest rate; and when you have a law properly drafted on that basis it does not make much difference whether you allow them to invest in bank stock, as your law provides, or in certain classes of bonds, as the New York law tried to prohibit. In a proper law of that kind, requiring an apportionment and accounting, the definition of what constitutes divisible surplus would be not only a test of merit, but a stringent requirement.

Mr. PARKER. I do not think you quite understood my question. It has been suggested, outside of the organization under the law, so far as this provides for the organization of companies in the District of Columbia, that the establishment of an office here, with a commissioner of insurance at its head, which would examine into companies that should be authorized to business here, other companies, outside companies, would save a great deal of trouble when a company wanted to extend its business, say, into 15 different States, and it therefore would be an advantage to the insurance business of the United States to have this central investigating office here, to determine as to whether the companies were solvent or not and to make some statement as to assets and liabilities. What is your opinion about it? Is it worth while to have a supervisory commission here for insurance carried on by foreign countries in the District of Columbia? Would it aid the insurance business in the United States or not?

Mr. FRICKE. The law of every State of the Union now provides that when a company is organized the State commissioner of insurance must investigate those assets and furnish a certificate to this new company as to its financial condition. My own experience has been that when a new company like that applied for admission to the State of Wisconsin it was always accompanied by such a certificate of examination, made by the insurance commissioner of its home State; and I think you will find, too, that in a great majority of cases when a company organized desires to go into a number of States, they have some examination either by their home department or some other department immediately prior to that time, so that I do not think there would be any special advantage.

And then you must remember another thing, and that is, that insurance commissioners in the United States are continually changing. We have had State supervision over something like 500 insurance companies in the United States. It would be difficult for many men in this room to name 15 of them. The insurance commissioners are continually changing. Making examinations is one of the perquisites of an insurance commissioner, and unless you can wipe out the perquisites, the mere enactment of a law of that kind in the District of Columbia, however good it may be, will hardly prevent a lot of insurance departments from making examinations.

A law was proposed in the State of Wisconsin which passed both Houses but was vetoed by the governor for some technicality, and it first made it the duty of the insurance commissioner to examine every domestic company once in three years, and then to furnish to each insurance department of every State in which that company was doing business a certified copy of that examination. It then provided that every company of any other State or foreign country licensed to

do business in that State must once in three years furnish the Wisconsin department with a certified copy of an examination made by the insurance department of its own State, and that when this law was complied with in that manner, then if the insurance commissioner deemed it necessary for the protection of the people of the State of Wisconsin to examine such an outside company, the examination was made at the expense of the people of Wisconsin, for whose protection it was made. If the company failed to file such a certified copy of an examination once in three years with the department then it became the duty of the insurance commissioner of Wisconsin to go and examine the company, at the company's expense, the cost of the examination to be paid out of the State treasury, and when collected by the company paid back into the treasury.

It seems to me that covered all the requirements and did away with the fees and perquisites of examinations.

[Filed by William A. Fricke—From The Weekly Underwriter, May 12, 1906.]

REVIEW OF THE AMES BILL IN CONGRESS.

This bill should not be credited to the conference of governors, attorneys-general, and insurance commissioners, nor to the committee of fifteen appointed to consider and report on uniform corrective legislation. Only a minority of the committee were present when this bill was presented for consideration; but a few hours could be given to it, and as introduced it does not contain the essential recommendations agreed upon by the conference.

One serious defect in this bill is that while permitting only the issuance of annual dividend policies by mutual life insurance companies, and nonparticipating policies only by purely stock companies, it does not make provision for an annual apportionment and accounting on the deferred-dividend contracts heretofore issued by companies, thus leaving managements wholly unaccountable for long series of years on 80 per cent on all policies on which 80 per cent—fully \$250,000,000—of the present surplus was accumulated.

Section 1, pages 1 and 2: Why should not the term "insurance company" include fidelity and surety companies?

Why would not the term "domestic" be more properly applied to companies organized in the United States, and "foreign" to companies organized in other countries, and "local" companies to those organized in the District of Columbia?

Definition of "unearned premiums," "reinsurance reserve," "net value of policies," and "premium reserve" not clearly defined, nor does section 8, to which reference is made in line 3, page 2, provide how same shall be computed.

Definitions "net assets," "profits," and "a contract of insurance" should be improved on.

Section 2, pages 2 and 3: Makes all companies of other States and countries "subject to the provisions of this act as a condition of transacting any business of insurance within the District of Columbia."

Section 4: The words "in the District of Columbia" should be inserted after the word "assets" in line 18.

Section 5, page 4: Does not require a knowledge of insurance as a prerequisite for appointment as insurance commissioner, requiring only that the appointee shall have no official connection with, own any stock in, or be interested other than as a policy holder in an insurance company.

It creates a purely local district office as a bureau in the National Department of Commerce and Labor, without giving to the Secretary of that Department any jurisdiction over this Bureau, except that in section 6 the Secretary is directed to cause a seal of office to be made for the insurance department, and in section 12 it is provided that the insurance commissioner shall annually make a report to the Secretary, but no provision is made what the Secretary shall or may do with it or whether it shall be printed or not.

Section 8, page 4: To this section should be added after the last word in line 13 "in the District of Columbia."

The words "authorized to do business" in line 24 should be stricken out and the word "incorporated" inserted; all after the word "District" in line 25, page 5, and lines 1 and 2, page 6, should be stricken out.

Lines 3 to 7, inclusive, page 6, would confer authority which Congress does not possess and which is unnecessary if such a company, not authorized to transact business in the District of Columbia, consents to such an examination. However, the expense of all such unauthorized examinations would, according to this code, be borne by the United States Government, although the people of the District of Columbia, for whose benefit examinations should primarily be made, are not at all interested in the result. These lines should be stricken out. All after the word "report" in line 11 and words in lines 12 and 18 should be stricken out.

Lines 12, 13, and 14, page 7: "May withhold such report from public inspection" would seemingly conflict with lines 8 and 11, inclusive, page 6. Unless changes suggested in this section are made, lines 15 to 22, inclusive, page 7, will require amendment.

This "model code" gives the impression of an effort to create a national department of insurance, hoping that no one will find it out, and then, if enacted into law, accept the results.

Section 9 should provide that the information called for shall be published in the annual report of the commissioner of insurance.

In re lines 19, 20, and 21, page 8: What does "a statement of any certificate issued by the superintendent extending the time for the disposition thereof" refer to? Evidently copied from New York law and refers to real estate obtained by foreclosure. This code makes no such provision as to domestic companies or certificate by the commissioner.

In re lines 19 to 22, inclusive, page 14: If the commissioner is to be authorized to examine "any company organized under the laws of any foreign company" (see line 25, p. 5, and line 1, p. 6) why should such foreign company transacting business in the District of Columbia not be required to file also a copy of its home-office statement? Either that or the commissioner should only be granted authority to examine its United States branch covered only by the report required in section 9.

Section 10: After the word "interest," in line 19, page 15, the words "but not lower than 3 per centum per annum" should be inserted.

If the makeshift of preliminary term valuation is to be injected, then insurers should at least be so far protected by inserting, after the word "policies," in the fifth line, page 15, the following, "for the first year of insurance: *Provided, however,* That any premium charged in excess of the ordinary life rate at age of insured shall be charged as a reserve liability."

If permission to employ makeshifts is to be injected into the statutes it would be better to employ the "select and ultimate method of valuation" enacted in New York, though neither makeshift is required to evade a full reserve if annual apportionment and accounting to each policy holder is provided for, and if companies are required to keep within the expense loadings of premiums.

What does all after the word "risks," in lines 16, 17, and 18, page 16, mean?

Section 11 should provide that the commissioner shall accept the certificate of valuation of the insurance commissioner of the State, under whose authority a company is organized and licensed to transact business, when such valuation has been made according to at least the minimum standard provided in section 10, and provided, that the insurance commissioner of such State accepts the certificate of valuation as furnished by the commissioner made by him of companies organized in the District of Columbia.

Section 12 provides only for an abstract of the annual statements of companies in the annual report of the commissioner. Unless the information called for in section 9 is published in full, the information asked for will be of little use to policy holders.

Section 15, page 20, lines 17 to 20, inclusive: If a company has a right to appeal, why should its license be revoked pending such appeal? The commissioner should have no discretion in the matter and the question of revocation should await final adjudication.

Section 16: This section deals with the impairment of capital, and makes provision if impaired to the extent of one-fourth or more on the basis fixed in section 10. Section 10 does not fix the basis of capital.

If this section intends that if the actual funds of a life insurance company are not equal to the net value of its policies, etc., why not say so? A mutual life insurance company has no capital stock to assess, and legislation as to impairment requires other provisions than laid down in section 17, but there seemingly is a conflict between line 18 in section 17 and line 12 of the same section, and lines 11, 12, and 13 of section 15, page 19.

Section 18 is unnecessary. (See lines 2 to 5, inclusive, p. 19, sec. 14.)

Section 19: Why not strike out, in lines 19, 20, and 21, page 22, the words "for abstracts or summaries of annual statements for publication when prepared by commissioner, \$5?" The provision in lines 24 and 25, page 22, and line 1, page 23, "for each copy of paper on file in his office, 20 cents per folio, and \$1 for certifying same," covers the matter fully, and in this connection attention is called to section 20, which is a needless repetition of the same matter.

All after the word "dollars," in section 19, line 9, page 23, should be stricken out. Retaliatory laws are vicious in principle and unjustifiable in practice. Such a law can not benefit companies organized in the District of Columbia unless the retaliatory fees collected would be returned to them to reimburse the domestic company for the larger fees and taxes paid in other States. To impose retaliatory fees on companies of other States is imposing a penalty for an offense of which they are innocent, making a third party the beneficiary, and does not at all benefit the companies organized in the District of Columbia.

Retaliatory laws have cost policy holders of insurance companies millions of dollars, not one dollar of which has been of the least benefit to them. These laws are costing policy holders hundreds of thousands of dollars annually, and their repeal would do more to make an insurance lobby unnecessary than any law restricting legislative expenditures can do good.

Section 21: Subsection 4, page 24, lines 20 to 22, inclusive, conflicts with section 1, which excepts fidelity and surety companies. (See line 7, p. 1.)

Section 24: This section should properly be entitled "A law to prohibit the organization of mutual life insurance companies."

This section requires the same amount of capital for the organization of a mutual life insurance company as for a purely stock company, and the stockholders having made the mutual company an assured success, which in a purely stock corporation would enhance the value of their stock, they are permitted to surrender it for its par value.

Capital in a mutual life insurance company can be of value only as an evidence of good faith, and this evidence of good faith can be secured without placing the control of the company in the hands of a few stockholders and burdening the policy holders with the added expense incurred by stock dividends. The Mutual Life Insurance Company, of New York, for example, was organized under a requirement of 500 subscribers for insurance, each of whom had paid in one annual premium.

The District of Columbia offers an especially promising field for the organization of a mutual life insurance company under a proper law.

Such a law should provide that "if organized as a mutual life insurance company, at least 500 persons shall have subscribed in the aggregate for at least \$1,000,000 of insurance upon their lives, and shall each have paid in one full annual premium in cash upon the insurance subscribed for, and shall deposit with the Treasurer of the United States, in securities required by law, at least the reserve on all policies as determined by the insurance commissioner according to the legal minimum standard prescribed: *Provided, however*, That the valuation of such policies shall be made on the net premium basis; the legal minimum standard shall be the American experience table of mortality, with interest at 3½ per cent per annum: *And provided, further*, That no policy issued shall be valued as term insurance unless premiums are based upon net term rates, nor shall the commissioner of insurance be permitted in the calculation of the reserve of such a company to vary the standard of reserve on the basis of any assumption of mortality, expense, or interest savings during earlier policy years. Every such company shall make an annual apportionment and accounting of surplus to each policy holder, and shall be limited in its expenditures for cost of management and the conduct of its business to the expense loading of its premiums."

Such a law would not only offer ample security to its policy holders, but with a proper law providing for the election of directors—in person or by mail—proxy voting eliminated, would enable the creation of the ideal mutual life insurance company, furnishing ideal protection.

There are no makeshifts necessary—preliminary term, select and ultimate, or any other method of valuation—to evade a full legal-reserve requirement; nor is there needed any method to enable managements to encroach on the funds of other policy holders for more than the cash premiums received provide for proper and necessary expenditures. This, with statutory enforcement of an annual apportionment and accounting to each policy holder, an annual statement

to the insurance department, giving complete information as to financial condition and methods of management, is all the restriction a life insurance company needs to give the best service to its policy holders.

The injustice of section 24 in requiring of a mutual life insurance company the same capital as of a stock company is further emphasized by the provision of section 30, line 3, page 35, requiring in addition to such capital that "at least 1,000 persons have subscribed for level-premium insurance therein to an amount not less than \$1,000,000, and that premiums for the entire amount for one full year have been paid," etc.

Section 25: The provisions of this section should be confined to companies organized in the District of Columbia; so far as applying to companies of other States or countries, the business done in the District of Columbia should, if at all, only be so limited.

Section 26: The word "capital" in this section should be changed to "funds."

County, town, and school district bonds should be included in subsection 4.

A new subsection should be added to read as follows:

"In the notes of policy holders in sums not exceeding the lawful reserve held upon any policy, on the pledge of such policy as collateral security."

While not in express words or directly authorizing a company management to act as dealer and cash in poker chips, subdivision 9, page 33, would permit financing the dealer by loaning to him funds on "personal securities, payable at a time not exceeding one year, with at least two sureties."

Subsections 6, 8, and 9 should be stricken out, as they form dangerous precedents; to open the door so widely is only a short step from providing that three gold balls shall be the recognized emblem of an insurance company.

Section 31: In lines 10 and 11, page 35, the words "or if after it has commenced to issue policies it shall cease for the period of one year to make new insurance" should be stricken out.

Suppose the management of a company having \$1,000,000,000 of insurance determined not to write new business, should such determination cause its corporate powers to expire and the commissioner be authorized to proceed to close its affairs?

There is ample authority to wind up the affairs of a company if insolvent, but so long as a company maintains solvency and pays its claims, what difference does it make whether it writes new business or not? The National Life of the United States of America did not write any new business for years, and then started in again and is in existence to-day.

Section 33: The Ohio or Wisconsin law on reinsurance should be enacted in place of section 33. The interests of policy holders in the reinsurance of a company are too vital to be left alone to the permission of the insurance commissioner.

Section 34: The word "third" in line 14 should be changed to "half."

Section 37: The words in lines 16 and 17, "or by proxy or representative," should be stricken out.

Sections 38 to 46, inclusive: It would be so easy a matter to formulate a method of representation, on the board of directors of a mutual life insurance company, by the election of such directors according to States or localities based on the membership therein, and so provide a direct vote by policy holders, either in person or by mail, without the intervention of the proxy or cumulative voting, that the interest of the policy holders would be much better secured, and give to each a direct and intelligent opportunity for a full and free expression of his choice when an emergency or necessity arises. The freer, fuller, and more direct such choice may be expressed the greater will this power of the membership act as a check on company management.

Take, as an example, the application of the cumulative plan proposed in this code to the Mutual Life of New York, if the 16,709 policy holders in Wisconsin were to send a representative to the meeting December 18 to elect its 36 directors. There were 689,321 policies in force December 31, 1905, and if held by 689,351 persons and each voting for the 36 directors, there would be 689,351 votes cast at the election; the Wisconsin representative attending the election and representing 16,709 policies casts all his votes on the cumulative plan, either for himself or some one other candidate, and so deposits in his own person 601,524 votes for one person.

The only purpose of cumulative voting has been to protect minority interests.

With a method of State or local representation on the board of directors provided, cumulative voting is as unnecessary as the proxy, for the policy holder then in person or by mail can intelligently and directly make his own choice,

with no chance of combinations or manipulation, and at less expense than the plan presented in this code.

Section 47: There are two suggestions worthy of consideration in connection with this section:

1. That with annual apportionment and accounting provided on all policies heretofore or hereafter issued, the application of the dividend may well be left as a matter of contract between the insured and the company, as there are, and may be more valuable methods of application to meet the conditions desired by the insured than only those provided for in this section.

2. That the application provided for in lines 1 to 6, inclusive, page 43, permits a life insurance company to assume a banking function, by permitting the company to accept apportioned surplus accumulations as deposits, pay interest thereon, and invest such deposits, not for life insurance purposes, but to enable the company to pay the interest. The laws of a number of States prohibit life insurance companies from doing any banking business. If the interest agreed on should not be realized or there should come an impairment of such deposits, then the funds of policy holders would be used to make good a speculative venture not contemplated in life insurance.

Lines 20 and 21, page 42, authorize setting aside from surplus "a contingent reserve not in excess of the amount prescribed in this act."

Where in the act is such amount prescribed?

With the very wide latitude given companies in this code as to investments, it would seem especially necessary that a rule be laid down for determining the annual divisible surplus, but other than providing that every such corporation on December 31 of each year, or as soon thereafter as may be practicable, shall ascertain the surplus earned by it during the year, from which shall be set aside "the sums required for the payment of authorized dividends upon the capital stock, if any"—"a contingency reserve not in excess of the amount prescribed in this act," every such corporation shall separately determine the aggregate amount of the remaining surplus, which shall be equitably apportionable to all policies issued on or after the 1st day of January, 190—, and shall ratably apportion such amount to said policies.

That there may possibly be a large proportion of the policies of the company heretofore written on the deferred dividend plan and properly should have a share in "the surplus earned by it during the year" does not seem to have been given consideration.

Nor does the recommendation of the conference of governors, attorneys-general, and insurance commissioners held in Chicago, February 1 and 2, 1906, that on deferred dividend policies already issued "there should be required from this time forward an annual statement and provisional apportionment of surplus to each policy holder, and the aggregate so apportioned to such policy holders should be charged as a liability of the company," seems to have been given any special weight by the compilers of the model code, yet from the President's message to Congress that "the convention was seeking to accomplish uniformity of insurance legislation," "and as prime step toward this purpose to endeavor to secure the enactment by the Congress of the United States of a proper insurance code for the District of Columbia, which might serve as a model for the several States," one would be led to believe—as honestly does the President, and who admits that he has no expert familiarity with the business—that this bill really emanated from the Chicago conference. There is not a governor who attended that conference but would veto this "model" if passed by the legislature of his State as presented in this bill if he understood how wholly inadequate it is as an insurance code; and it is questionable whether there is a single insurance commissioner who carefully goes over its provisions who would be ready to offer it as a shield of protection to the people of his own State.

Companies could readily give up so small a field, and without reflection withdraw, and the chief aim of a model code for the District of Columbia should be such simple, effective provisions governing the domestic companies as to their organization, conduct, and supervision as to have them, when they go out into other States to transact business, carry the conviction, by their equity, security, benefit, and publicity, that the laws under which they were organized, conducted, and supervised must in reality be a model code.

Section 50: Eighteen years of experience with this law in other States has proven it to be ineffective, nor does it offer the remedy for an evil.

The only effective remedy to minimize rebating is to limit the amount of commission which can be paid in any one year to within the expense loading of the cash premium actually received by the company; this would tend to

make commissions uniform, and if then the agent rebates he injures no one but himself.

How utterly ineffective the section here presented can be shown by this illustration: An agent writes an ordinary life policy for \$1,000 in the District of Columbia, on which the annual premium is \$21.10, of which he returns to the applicant either \$5, or even \$3.44—his full commission—as an inducement to take the insurance; and the agent has committed a glaring violation of this law.

Another agent persuades another resident of the District of Columbia to pay to the company \$100,000 to purchase an annuity; the agent's commission is 5 per cent, and he returns to the annuitant \$4,000 as a rebate to prevent the annuity going to some other company, and the agent has not violated this law. The law refers only to life or endowment policies.

To enact antirebate laws and permit encroachment on other policy holders' funds to pay excessive commissions has proven as effective in benefitting the policy holder as a pretty nicely scalloped piece of pink-tinted court-plaster pasted over a carbuncle on the back of his neck would prove in curing the boil.

Section 50 should be stricken out.

Section 52: In place of the word "hereunder," in lines 16 and 17, page 47, insert "in the District of Columbia;" in line 18 strike out the word "any," and insert "the;" in the same line, after the word "policy," strike out the words "issued thereon."

Section 54: With section 53 and other sections as to policy provisions, it hardly seems necessary to enact standard policy forms and then close the door to all originality, progress, and incentive on the part of any company to present a contract form more nearly covering the protective needs of the people by first compelling the submission of the form for approval to an incumbent in the office of insurance commissioner, whose only qualification for appointment laid down in this "model code" is that he shall not be officially interested in or a stockholder in an insurance company, and then, having submitted such a form, with the necessary tabulations and calculations, and proven the reasons why the company should be permitted to issue such a policy, the insurance commissioner is persuaded to approve the form with or without modifications thereof, as may seem to him expedient, and establish the same as a standard form of policy which any company doing business within the District shall be entitled to use in addition to the forms hereby prescribed."

Yet such a new form may represent the study, thought, and work of years.

What a stimulating effect it would have had on American inventive genius if the United States patent laws had provided only for the issuance of a certificate reciting "this is a patent," and then served notice on everybody that they were entitled to make use of it without infringement. There would probably be as many patents issued under such a law as there will be philanthropists to put up the necessary capital to organize mutual life insurance companies if this "model code" is enacted.

Section 73: If this section refers only to fire insurance, the word "fire" should be inserted before the word "insurance" in the eighteenth line.

Section 86: Should either not apply to life-insurance brokers, or, if it does, should require that the application for such broker's license be indorsed by the companies with whom insurance or reinsurance may be placed.

Section 87: Same objection as to section 86, as section 89 provides that such broker "be held to be the company's agent."

Section 91: With the necessary changes in sections 86 and 87, this section is unnecessary, and should be stricken out.

This "model code" offers neither hope for the new company nor protection for the old policy holder, and of these defects the man who is in should receive the most consideration. Why leave him without redress or remedy? There is no excuse for even the merest tyro attempting to draft a code of insurance laws and neglect provision for what has so clearly been shown to be necessary.

Fricke Investigating committee, Equitable Life, report to directors, page 44:

"The holder of a twenty-years' distribution period policy has no knowledge whatever concerning the earnings of his policy until the expiration of the twenty years. He can not make comparisons with other companies, because he does not know the results in his own case. The absence of accountability makes possible the pursuit of rapidity of growth at undue cost, because the effect of that cost is not felt by the policy holder."

The insurance commissioners of Wisconsin, Minnesota, Tennessee, Kentucky, and Nebraska, in their report of examination of the New York Life, pages 78 and 79, say:

"Profits are being accumulated in a blind pool, carried as surplus or additional reserve, constituting a fund absolutely at the disposal of the management, inevitably creating a false conception in its mind as to the resources and obligations of the company, and leading to extravagance." And the commission heartily recommend "provisions for securing a proper accounting to the present holders of deferred dividend policies."

New York legislative investigating committee report, pages 427 and 428, Volume X:

"For the most part the companies have denied any legal or equitable obligation with reference to these accumulations prior to actual apportionment, and they have been available to provide means for lavish expense in obtaining new business and for other outlays which would have been checked by a suitable system of accounting."

Truesdale investigating committee, Mutual Life, report to directors:

"It is difficult to resist the conclusion that the policy of the management in giving preference to the 'deferred dividend payment' form of insurance was deliberately formed and carefully carried out in furtherance of its ambitious financial schemes. No regular annual accounting was required or made to the beneficiaries of the latter; such accounting was to be made in the future at the end of varying periods, with no check or opportunity for comparison of results year by year between different companies. Such a situation is inherently weak and dangerous to all concerned, and is undoubtedly directly responsible for many of the troubles which have befallen this company and those identified with its management."

The real evil in the past, as shown by these four investigating commissions, has been the unaccountability of company managements as to the surplus accumulations of deferred dividend policies, and the remedy would seem to be annual accounting—see page 44, Senate document No. 333, Fifty-ninth Congress—but this "model code," instead of incorporating this most valuable and necessary recommendation, leaves this class of policy holders to be discriminated against and in worse position than ever.

No man with any knowledge of the business and desirous of reform, if he had the choice of a law prohibiting deferred dividend policies in the future, or a proper law requiring annual apportionment and accounting to each policy holder on all policies—heretofore or hereafter issued—but would select annual apportionment and accounting as offering the most immediate and far-reaching results for good. Unquestionably, such legislative investigations as conducted by the Armstrong committee in New York, and the Frear committee in Wisconsin, of themselves will bring home to company managements a greater sense of their responsibilities and ultimately result in benefit to the business of life insurance, but it will be futile to expect that such legislative experiments as the "general bill" in New York, or this kindergarten effort at a "model code" in Washington, can bring about even an imitation millennium in life insurance managements.

Mr. AMES. I have given the committee members a copy of these amendments. I feel that they are in large measure proper amendments to the bill. I do not wish to yield up the principle involved in my bill until forced to do so by the action of the committee.

As to those amendments which insert the words "doing business in the District of Columbia" throughout the bill, that question will no doubt be thrashed out by the committee.

I submit these amendments as the result of a number of conferences. Before we start in upon the bill, upon its consideration section by section, I have been given to understand that you would like to address the committee [addressing Mr. O'Brien].

Mr. ALEXANDER. I would like to hear Mr. O'Brien in reply to Doctor Fricke. I think the other gentlemen of the committee would also.

Mr. GILLET. We do not propose to take up this bill section by section now, do we, Mr. Chairman? We want first, do we not, to get the general principles of the bill fixed in mind?

Mr. ALEXANDER. There have been points made against the bill. If they can be answered, I should like to hear them answered.

Mr. PARKER. A number of actuaries are here, are they not? Mr. Ames, I believe you have representatives here from New York and various places?

Mr. AMES. I would like to have the committee ask some questions of Mr. Rhodes, who is one of the leading actuaries of the country.

STATEMENT OF MR. E. E. RHODES, OF NEWARK, N. J., ACTUARY, MUTUAL BENEFIT LIFE INSURANCE COMPANY OF NEW JERSEY.

Mr. RHODES. Mr. Chairman and gentlemen, I appear at the suggestion of Mr. Ames, and not because I desire to offer any particular criticism of the bill.

I rather inferred from the discussion this morning that the question in the minds of the committee was whether the principle embodied in the bill before you was in conflict with your opinion rendered during the winter in the matter of Federal control of insurance.

I do not appear, and am not here, to oppose this bill. With the amendments that Mr. Ames submits, and other amendments which, in my opinion, should be made, the bill appears to me to be a step in the right direction, and one whose passage by Congress will be welcomed by many life insurance companies.

The amendments proposed by Mr. Ames answer many questions raised by the members of the committee this morning, and if made a part of the bill would have this effect: The bill simply establishes in the District a department of insurance for the purpose of controlling the business of insurance in the District. It provides a mode of incorporating domestic companies, and prescribes the terms upon which companies organized outside of the District shall do business within the District.

To that extent I favor the bill. I do not know how far you desire the speakers to go into the details of the bill.

Mr. PARKER. At present, sir, what we want to know is this: The last speaker said he did not think it would do much good. The question in my mind is, Will it or not? Will it do good; and if so, what good will it do?

Mr. RHODES. My view of that, sir, is this: The matter of insurance to-day is aflame in the public mind. Undoubtedly there will be much legislation proposed this coming winter in the legislatures of the several States that will be in session. Much of that legislation, most of it, will doubtless be unwise, injurious, not designed to protect the interests of the public. If Congress in its judgment and in the exercise of its wisdom shall pass a bill regulating insurance in the District of Columbia, I can not help believing that that act would have great influence with those legislatures of the States. Therefore I believe that a wise, judicious act passed by Congress would result in much benefit to the people of the several States. Does that answer your question, Mr. Chairman?

Mr. STERLING. You mean simply as a model?

Mr. RHODES. As a model, and as a signboard to the legislatures of the States as to the direction in which they should go.

Mr. GILLET. Have you any assurance that these States will adopt this law if enacted?

Mr. RHODES. None whatever.

Mr. GILLET. They are just as liable to follow Massachusetts or New York as they would be to follow this law?

Mr. RHODES. Yes; but I should say, if I were a State legislator, I would place great weight upon an act of Congress.

Mr. PARKER. Mr. Rhodes, have you had any experience lately in the formation of bills of this sort?

Mr. RHODES. Yes, sir; I have. I may say that when the legislative committee in New York desired to amend their bill, another gentleman and myself were asked to meet with them as advisers along actuarial lines. We met several days, and the Armstrong bill, as it is called, passed by the legislature of New York in its final form, is the result of those conferences.

Mr. PARKER. Let me ask you: You say that this bill provides for the incorporation of domestic companies in the District of Columbia. Have you been over the provisions in that regard in this bill?

Mr. RHODES. Yes, sir.

Mr. PARKER. Have you any further amendments upon that part of it than those suggested by the bill itself and Mr. Ames?

Mr. RHODES. No, sir; I think not. I have nothing to say in regard to their incorporation; but I think the bill is subject to still further amendment regarding the mode prescribed for electing directors or trustees.

Mr. PARKER. Now, still sticking to the question as to whether or not it will do good, some of the commissioners have spoken on the subject of its being an advantage to have a department of insurance to act under this law, so far as it prescribes the terms under which companies outside of the District shall do business. Will the establishment of such a bureau be of advantage or not to the rest of the insurance companies of the United States and to such outside companies? What would you say on that subject?

Mr. RHODES. I could not say, in my opinion, that it would be of any particular advantage along that line. We are not troubled with too little legislation, but with too much. [Laughter.]

Mr. BRANTLEY. May I ask you a question?

Mr. RHODES. Certainly.

Mr. BRANTLEY. Are you familiar with the insurance laws of the District of Columbia?

Mr. RHODES. The present law?

Mr. BRANTLEY. Yes.

Mr. RHODES. My understanding is that there is very little insurance law here.

Mr. BRANTLEY. Are you familiar with the insurance business of District.

Mr. RHODES. Yes. We are represented here; and the requirements imposed upon outside companies are very few. In fact, it may be said that there is very little supervision of outside companies in the District?

Mr. BRANTLEY. I just wanted to know the necessity of this law, according to your knowledge, in the District; whether the insurance business was in such condition here as to require legislation of this sort.

Mr. RHODES. No. You have had a commissioner here, who, in the absence of law, has exercised his judgment and such power as he has had, in my opinion, in a most efficient way.

Mr. BRANTLEY. The policy holders have been protected, so far as you know?

Mr. RHODES. Entirely; due as much, I think, to the personality of the commissioner, and more so, than to any other consideration.

Mr. BRANTLEY. Then, so far as conditions in the District are concerned, there is no pressing necessity for legislation?

Mr. RHODES. No; I could not say that there was.

Mr. BRANTLEY. I understood you to say you favored this bill as a step in the right direction. What did you mean by that, Mr. Rhodes, if I may be permitted to ask you?

Mr. RHODES. In this respect, as I think I said: That we could look to this committee to recommend and to Congress to enact a law regulating the business of insurance which should be far superior to a bill which would be passed by any State legislature.

Mr. BRANTLEY. You do not mean, then, as a step in the direction of Federal control of insurance?

Mr. RHODES. No, sir: I am not in favor of Federal control of insurance.

Mr. STERLING. I presume there is more intended in this bill than simply the regulation of insurance here in the District of Columbia. If that is all, I presume it is not of much consequence.

Mr. RHODES. I can not speak of the intent. The bill did not originate with any life insurance company. I am here simply as a representative of a company doing business in the District.

Mr. STERLING. Do you think insurance companies would regard an investigation by Federal authorities of any value to them in securing or soliciting business out in the States?

Mr. RHODES. Of no practical value.

Mr. STERLING. You think it would not be any inducement to them to come under the provisions of the law voluntarily for the purpose of showing, or enabling the persons who are doing the soliciting to show, the fact that they have been investigated by Federal authorities and had been found in good standing?

Mr. RHODES. Not in my opinion. I think an investigation by the State of Massachusetts would carry just as much weight as an investigation by a Federal bureau.

Mr. STERLING. I doubt that; I mean among the people generally. You get away from Massachusetts or away from New York. I think it would appeal to the people more if a company could say that its affairs had been investigated and had been approved by the Federal authorities; I believe it would appeal to the people and be convincing to them that it was a safe company with which to do business. Now, if this would have a moral effect of that kind, it would be of advantage not only to companies, but an advantage to the people also.

Mr. RHODES. There might be that moral effect, sir. I was speaking from the practical standpoint.

Mr. STERLING. Oh, from the legal standpoint, I guess it is conceded.

Mr. RHODES. I spoke of Massachusetts because Massachusetts has become famous for its strict supervision and its honest supervision of the insurance business.

Mr. ALEXANDER. I suppose Judge Sterling probably based his idea of the helpfulness of such a bureau, just now, if we should enact this,

on the fact that all the combinations and trusts are tumbling over each other to get out of the way of President Roosevelt, and people might be impressed with the idea that something is going on, and might think that if we took up the insurance business it would have some effect.

Mr. STERLING. I think it is true, Mr. Alexander, too, that the people have more faith in the Federal Government than they have in a State government outside of their own State. They may be familiar with their own State affairs and have complete confidence in their own State government, but not so with a State government other than their own. I do believe they have more faith in the Federal Government than they have in the governments of States other than their own.

Mr. BRANTLEY. It might benefit insurance companies to have this certificate from the Federal authorities, but it would not benefit the people a particle unless the Federal inspections were more thorough than the State inspections.

Mr. STERLING. I think it would be more thorough; perhaps not more thorough than every State, but I have no doubt it would be more thorough than the inspection of some of the States. There may be some State governments that have just as good protection as the Federal Government would give.

Mr. GILLETT. Take section 2 of the bill, and it reads:

SEC. 2. That all insurance companies now or hereafter incorporated by authority of any general or special law of Congress shall be subject to the provisions of this act and to such laws as may be hereafter passed affecting or altering their corporate rights or duties or dissolving them. All foreign insurance companies, as a condition of transacting any business of insurance within the District of Columbia, shall be subject to the provisions of this act.

That would include the general law for the incorporation of companies in this District.

Mr. AMES. It is next to no law at all, practically.

Mr. GILLETT. It says they—

shall be subject to the provisions of this act, and to such laws as may be hereafter passed affecting or altering their corporate rights or duties or dissolving them.

Is it not intended by that section, Mr. Rhodes, that a company coming here and incorporating under the laws of the District of Columbia and placing itself under acts of Congress can take itself beyond and outside of any legislation that may be passed by any other State, because other States can not pass any law in conflict with the acts of Congress?

Mr. RHODES. I think, sir, the several States are free now to prescribe the terms and conditions under which a company, whether organized in the District of Columbia, under a special act of Congress or not, may undertake to do business.

Mr. GILLETT. Suppose some act of Congress should be passed hereafter?

Mr. RHODES. I shall have to leave that question for you legal gentlemen to determine for yourselves. I should say that such an act, from my point of view, would not be legal; that Congress could not take away from a State the right of a State to determine the condi-

tions under which an insurance company should do business within its borders.

Mr. GILLETT. I do not believe it could, either, but I wonder if there could not be some provision there that would go beyond mere regulation and practically put the control of the insurance companies of the country under the acts of Congress?

Mr. FOSTER. That only relates to District of Columbia corporations.

Mr. GILLETT. I know; but they could incorporate over again.

Mr. RHODES. Yes; but in what way could those companies escape the supervision of other States?

Mr. GILLETT. I do not know.

Mr. RHODES. I know of no way by which they could until it is declared that insurance is commerce.

Mr. ALEXANDER. I would like to ask Mr. Rhodes a question. Can you give the committee an idea why this bill is here? Who is behind it? [Laughter.]

Mr. RHODES. I can not tell you, sir, because I am not in the confidence of those who are behind it. All that I know is this: That in February the insurance commissioners of a number of States met in Chicago; that the company with which I am connected received an invitation to attend that conference; that it was stated to be for the purpose of discussing the insurance situation. I was present at that conference, and Mr. Ames was also present and brought forward his original bill, which, I think, was introduced by him in February of this year. That was the first knowledge I had of the bill other than the fact that such a bill had been introduced. Then the insurance commissioners met again in April, when I understand that another draft of Mr. Ames's bill was presented to them and discussed and several changes made in it, and then the bill was reintroduced here. I think I am entirely safe in saying that no insurance company is back of the bill.

Mr. ALEXANDER. What good, other than that it might act as a sign-board for legislators of the several States, can it do, if you know?

Mr. RHODES. None, so far as I know, sir.

Mr. ALEXANDER. I should judge from what you said of the commissioner of the District of Columbia that as long as he was the commissioner, at least, we did not need it in this District.

Mr. RHODES. The insurance business under his supervision has certainly been conserved.

Mr. STERLING. You spoke very commendatorily of the supervision of insurance in Massachusetts. Did I understand you correctly?

Mr. RHODES. Yes.

Mr. STERLING. Do you consider the Massachusetts statute on that as among the very best State statutes in the Union?

Mr. RHODES. No, sir; I do not. There is much that is obsolete, much that is unnecessary, in the insurance code of Massachusetts. That is true of all the older States of the Union. I think that the essential parts of this bill could be condensed in a very few pages and the interests of the public just as fully protected as they would be under this bill.

Mr. PARKER. Would you be willing to mark what you think are the essential parts of the bill and hand them to the committee? [Laughter.]

Mr. RHODES. I am rather modest, and I am inclined to modesty. It would be a pretty big task. But I would be very glad to do what I could to aid in such a work.

Mr. GILLET. If that should be reduced to fully one-third or more, you would not consider that a model bill as it stands now, would you?

Mr. RHODES. I say this has in it the material for making a model bill.

Mr. GILLET. But you would not put it together in the way it is?

Mr. RHODES. No, sir.

Mr. BRANTLEY. I understand the suggestion of Doctor Fricke is that a commission be appointed to get up a bill by next winter. I believe that was his suggestion?

Mr. RHODES. I could not join, I think, in that suggestion. I believe that if the Committee on the Judiciary of the House of Representatives deems the bill worthy of its consideration it could report a bill which would contain all that was essential in this matter.

Mr. BRANTLEY. Do you not think the committee would be entitled to the benefit of your knowledge as to what points of the bill are essential?

Mr. RHODES. I would gladly offer my services to the committee or any member that might desire them, freely and unreservedly.

Mr. ALEXANDER. Then after you had presented such a bill would there be any need of it? [Laughter.]

Mr. RHODES. I am inclined to think there is need of an insurance code for the District. How far that code should go, I am not prepared to say.

Mr. ALEXANDER. Then your bill would simply be a simple, plain code for the use of the District of Columbia?

Mr. RHODES. Precisely.

Mr. ALEXANDER. And nothing else?

Mr. RHODES. Nothing else.

Mr. ALEXANDER. And that would not really be necessary so long as Mr. Drake lived?

Mr. RHODES. No, sir; and was commissioner. [Laughter.]

Mr. PARKER. Does the committee desire that Mr. Rhodes should hand in such a short draft, or not? He says he will do it if he is asked to do it.

I will take the liberty myself to ask you, Mr. Rhodes, to send in, if you will, a memorandum of what you consider the essential parts of this bill, so that the committee will be advised upon that, because that would avoid a great deal of difficulty to us in going over the bill.

Mr. AMES. I should like to call upon Major Ashbrook, of the Provident Life and Trust Company, of Philadelphia, to speak.

Mr. PARKER. We shall be glad to hear him.

STATEMENT OF MAJ. JOSEPH ASHBROOK, VICE-PRESIDENT OF THE PROVIDENT LIFE AND TRUST COMPANY, OF PHILADELPHIA, PA.

Mr. ASHBROOK. Mr. Chairman and gentlemen, I inferred from the notice which the secretary of the committee was good enough to send to me that the speakers were expected or requested to confine

themselves to specific points in the bill, and not to attempt a general discussion of it.

Mr. PARKER. It did not mean as much as that.

Mr. ASHBROOK. I had prepared myself particularly to discuss one or two of the sections, and at some length, and then to follow that up with certain amendments which I had hoped would commend themselves to the committee.

Before addressing myself to that I would like to ask your indulgence to one or two general remarks. The deplorable condition of things brought to light by the Armstrong committee in New York was not the result of absence of legislation on the subject of life insurance. It is not in the power of legislation to compel an economical and safe management of life insurance. It may contribute to that end, but it is a great fallacy to suppose that it alone can accomplish that end. I do not know whether it would be a rash assertion to say that some of the conditions that have arisen in life insurance in recent years have come as a result of a blind reliance on State supervision. The unfortunate and altogether mistaken apprehension existed in the minds of very many people that the hall-mark placed upon a company by a department of insurance was almost literally a guaranty by the State of the solvency and good management of that company.

The investigation in New York disclosed that there had been great extravagance in management. It revealed, however, that the companies against which the most serious charges of mismanagement had been made were perfectly safe and solvent. To my mind it is perfectly remarkable that in the midst of this wonderful investigation there should come from every quarter, from every investigating committee, the assertion, made in the most positive terms, that the system was absolutely safe and that nobody need have any fear concerning it.

The things to be censured are, first, wasteful extravagance incident to the too rapid expansion of the business, and in the next place, certain irregularities in the financial operations of the company. I deplore these irregularities and would not for one instant condone them, for no irregularity, although it may serve an innocent purpose, can for one instant be condoned. The financial management of any great institution, particularly an institution like a life insurance company charged with a sacred trust, should be like Cæsar's wife, above suspicion.

Those irregularities, gentlemen, have resulted in what? In any very serious loss to the companies? When the final summing up comes, it may be found that the financial management of these companies that have come under the severest censure has been, on the whole, rather fortunate for the members of those companies. Some methods that have been employed can not, of course, be defended.

Whence came this extravagance in life insurance management? In my deliberate judgment, the result of long reflection and abundant opportunity for observation, the great extravagance in life insurance, involving the waste of tens of millions of dollars of money, grew out of a false method adopted by many companies respecting the payment of dividends. I refer to the method known as "deferred dividends."

A man gives me \$20 to buy something for him, the price of which is uncertain, and I come back to him and say, "It has cost \$15." He replies, "It does not make any difference about the change. You will have a good many errands of mine to do in the year, and at the end of a year or five years you can return to me such change as you may have in your possession. I do not care to be bothered with the change now."

The premiums which you see in the publications of the companies represent the estimated cost at the respective ages of the particular kinds of insurance, based upon a very liberal assumption as to the number of deaths that may occur, on a very conservative assumption as to the rates of interest that will be earned on the money, and on an assumption respecting the expense of conducting the business. At the end of the year the company has found out whether its death losses are greater or less than the number assumed. If it is found that they are less, too much money has been taken to pay the death losses of that year. They find they have made more interest on their money than they had estimated. They do not need the excess. They find that, as the result of economy, the provision for expenses has not all been expended. Now, the difference from those three sources is the difference between the estimated cost (the premium) and the actual cost as shown by experience. It is change. Obviously, that change having been scientifically ascertained, it should be handed back to the policy holder; and so it was for many years, and during that time there existed the warmest possible kind of competition between the companies as to which should furnish life insurance that was perfectly safe and at the lowest possible cost. What indicated the cost? The change that was handed back; the difference between premium charged and the change received indicated the net cost. Policy holders compared the net cost in different companies. Competition followed on those lines. The companies had every motive in the world to practice economy and return every penny, because in that way more than in any other way a company commended itself to the approbation of policy holders and secured new business.

There arose about twenty years ago a system called "tontine." If by some happy accident the word had been inverted and had been called "tineton," it would have been equally significant. As it was not easily comprehended, I suppose it served a useful purpose. Under the "tontine" system a man left his dividends in the hands of the company for a series of years. If he failed to pay the premium, the policy and accumulated dividends were forfeited. If he died during the period and had paid his premiums up to that time, he failed to receive his share of the accumulated forfeitures. If he survived and paid his premium, he got his share of the "tontine" fund. That was a little too rank. It was succeeded by what was called "semitontine," and if I do not run the risk of being accused of falling into merriment, I would say the name signified that it was just half as bad as "tontine." Under that system the policy itself was not forfeited, but the dividend was, in case a man died or lapsed his policy. Usually the period selected was twenty years. The expression "semitontine" became unpopular, and there was substituted other designations, "deferred dividends," "accumulated dividends," etc.

Now, in a company issuing life insurance at the rate of \$30,000,000 or \$40,000,000, or, say, \$150,000,000 or \$200,000,000 a year, this pool increased and became very large, and a few years ago the aggregate pool of three companies was approximately \$200,000,000.

Was there any accountability respecting this vast accumulation of so-called "surplus?" None at all. Ask any insurance commissioner present. If an insurance commissioner had arrogated to himself the right to make any inquiry about it he would have been told in diplomatic terms that it was none of his business. There was no provision in the law as to that money. Was it charged as a liability against the company? Not at all. It was held loosely, and when it became necessary to resort to extraordinary expenses by way of making the business large, \$1,000,000 or \$10,000,000 or \$20,000,000 of this fund was appropriated for that purpose. Commissions for obtaining business were advanced inordinately. I am ashamed to say it, but these commissions, augmented by bonuses, made it possible for agents in many cases to deliver policies with practically no charge for first premium. I blush to acknowledge such an outrage in connection with a business that, by every token, should be regarded as a sacred trust.

The principal companies were seized with a mania as to which should be the biggest, and there came to be erected as a standard of life insurance—and in course of time the public accepted that standard—the idea that the biggest was the best. The question would be asked by an insurer, "How big is your company?" "Not so big as the other company." "I prefer the biggest company."

Men were ambitious that the flag of their company should follow the sun in its course around the globe. There should be no land unvisited by the American missionary of life insurance. Companies that had one hundred and fifty millions or two hundred millions of insurance in force, with an asset accumulation of fifty or seventy-five million dollars, were spoken of patronizingly as "small companies." This wild extravagance, it is asserted, was primarily the result of such companies having in their possession vast amounts of so-called "surplus," respecting which they were held to no accountability.

That was the first condition that made the thing possible, and the second condition—that you know as much about as I—was that curious apathy which men exhibit concerning the things that concern them intimately, if they happen to be one of a large group. The man that watches his own individual business with an argus eye becomes altogether indifferent if he is a stockholder in a large corporation. But if there had not existed this apathy, and policy holders had wanted to inquire, how could they get information respecting the proper and economical management? The curtain was rung down for twenty years. Twenty years from now you can find out whether your company has been economically managed or not.

There, gentlemen, is your explanation. I challenge any successful contradiction of the statement. There is your explanation of that terrible reign of extravagance in life insurance; and probably all the other evils that have disfigured and defaced the system in the last fifteen years have come as a sequel to this extravagance.

MR. ALEXANDER. May I ask the gentleman a question right there?

MR. ASHBROOK. Certainly.

Mr. ALEXANDER. Does the Armstrong bill require in future the elimination of those abuses and irregularities?

Mr. ASHBROOK. I will meet your question, if you will pardon me, with a direct answer in a moment.

Mr. ALEXANDER. Go ahead, then.

Mr. ASHBROOK. I would be very much pained if in the discussion of this bill I should exceed the proper limit of time that might be accorded to one speaker, and if I exceed that limit I wish you would remind me of it.

Mr. PARKER. I think I can express the opinion of the committee when I say you can not exceed your limit of time.

Mr. ASHBROOK. Thank you. As to the remedy, this system of deferred dividends should be absolutely prohibited by law and thrown out as an accursed thing. That is the remedy, and there should be required what we call technically an annual accounting—that the company every year shall show what has been the cost for that year, and shall set aside to each policy holder his share of the surplus for the year, and, if it is desired, there should be furnished to the commissioners of the different States a statement of the method by which that division has been arrived at. There are various ways in which that change can be handed back. Most people would prefer to receive it annually in money, which could be used in part payment of current premium. Respecting policies now on the deferred dividend plan, which the companies probably could not legally be required to change, the law could provide that the annual surplus belonging to a policy holder of this class should be determined and the policy holder notified. The amount thus apportioned should be charged against the company as a definite liability; the companies should no longer be permitted to carry it as a surplus.

If there had been no deferred-dividend system, as I said before Senator Armstrong at a hearing in Albany—if there had been no deferred-dividend system there would have been no Armstrong committee, no necessity for that committee.

There is a large section of life insurance, gentlemen, bear in mind, against which you dare not direct the finger of criticism or censure: a large section that has been faithful to its obligations, that has maintained the highest standard of security, and has furnished life insurance at a very low net cost, a cost that would have been still lower if they had not had to compete with conditions so abnormal. But notwithstanding those conditions, they have maintained the highest standard of security and furnished life insurance at a very low net cost. Many of these companies were required to furnish detailed reports to the Armstrong committee that exhibited in fullest detail their business methods and financial condition, and if you will read the report of that committee you will find words of approbation for those companies, and not words of censure.

Let there be an annual accounting. To refer again to my kindergarten illustration of a moment ago: I am commissioned to buy something which may cost \$20. I make the purchase and return \$5 change. Some one else is entrusted with a similar commission and returns \$4 only. I would be preferred to him. But a third person, acting under a similar commission, returns \$6, and he is preferred to me. Naturally competition would arise among these three persons

to return the most change. Companies which pay annual dividends give to their policy holders, intelligent and unintelligent, the means of knowing at what cost the business is being conducted, and the natural competition among companies results in a comparison between different companies. A company failing to compare favorably would fall behind in the race and therefore would have the most powerful stimulus to a skillful and economical management.

Now, what is the necessity for any legislation on life insurance? While there have grown up abuses, there have simultaneously grown up very great improvements in the development of life insurance, entirely independently of the requirement of law. The policy contract has been greatly liberalized. Indeed, competition was so great among the companies that it was a serious question whether they were not granting too much and were not too liberal. That is the effect of competition.

I think I have made it clear that with the adoption of annual dividend legislation will not be needed to prevent the extravagance of life insurance companies. In New York, however—answering your question now, sir [addressing Mr. Alexander]—they have adopted a method which I think is very unwise. I think it may accomplish a very great deal of good in the end, but I think the compulsory adoption of it is tyrannous and is going to work injury. They have put a limit on the expense. Companies must not pay any more for getting business than the amount of the loading for expense on the policies the first year and the amount of gain in the death rate according to the select and ultimate plan. The cost of putting a policy on the books must be confined to that, and thereafter the general expenses of the company, including everything, must not exceed the general loading on the policy.

That requirement is put upon the companies in a very arbitrary manner, and the companies have a right to complain of it. If the legislature of New York discovered that the abuses in their own companies could be remedied only by the most drastic measures, they were at liberty to apply such remedy to their companies as they thought proper; but in their wisdom they have applied that particular remedy to all the companies that do business in that State, in that respect violating the established principle of State comity, thereby doing what will bring bitter fruit to them, perhaps, in the future in the way of retaliatory legislation in other States. The severe provisions of the New York law respecting the limitation of expenses are applicable to other State companies. Therefore there is no need for Congress or the legislature of any State to adopt similar provisions. New York is a very rich field for the business, and all companies go there and are as much subject to this extraordinary law as if it had been adopted by their own States. The law is experimental, and the principle upon which it is based is far from being acknowledged and accepted by the ablest underwriters. The law also was adopted to meet an emergency in New York and but for that emergency would not have been proposed. It would at least be unwise for other States to attempt to regulate expenses by copying this law. Better wait until it is tested; better still, pass no law at all on the subject and leave the matter to be regulated by the competition which would follow annual dividends.

As to the financial security of life insurance companies, a standard for determining the safe and solvent condition is established by law in the various States and is pretty nearly uniform throughout the country. The State assumes the right to select a table of mortality, and it imposes that table upon the companies. It selects a rate of interest which, in its judgment, is conservative, and the companies must conform to that. The only discretion left with the companies is the amount of "loading"—or provision for the expense of conducting the business—which they may add to their premium.

The cost of insurance naturally increases as a man grows older. To pay an increased amount of premium each year, in accordance with that fact, would be impracticable, because there would come a time when the cost would be prohibitive. Therefore the cost of the insurance for as long a time as the policy is to run is calculated, and this is converted into a yearly premium of uniform amount for the whole period. This involves an accumulation of money in the hands of the company, as for a considerable time the cost of the insurance is not so great as the premium. This accumulation is according to a scientific method, which the law recognizes and enforces. The amount of this accumulation is the liability of the company. This liability is calculated each year by the company, but it is also calculated by the insurance commissioner. Against this liability the company must show assets of at least equal amount. The greatest publicity is required respecting it. The list of assets must be published, showing not only their par value, but their market value and their cost value. If money is loaned upon collateral security, a description of the collateral is specified in every published list. If you go to many of the departments you will find there lists of all the mortgage loans of the companies, perhaps in one company aggregating fifteen or twenty million dollars; every detail respecting them. Under the present law it seems we have almost every guarantee respecting the security of companies.

I say to you here seriously, gentlemen, forbid deferred dividends, and competition will accomplish the rest. A few months ago it was reported to me that Senator Armstrong had made the following expression (and in my own mind I was awarding to him the greatest praise for condensing so much wisdom in a limited space, but from what I have learned since I am led to believe that he was not the father of the expression): "What we want in the present case is a maximum of publicity, a minimum of legislation, and competition will do the rest." Let the business be done in glass houses; no honestly managed company resents the severest public scrutiny.

Now, after this brief but general introduction, I want to say this: What about this bill? The country is in a state of panic. The people are perfectly unreasonable. The yellow journals got hold of this matter of the Armstrong investigation and have inflamed the minds of the people to such an extent that they think life insurance throughout is a sink of iniquity, and that no honest man is connected with it, and that the most stringent and cruel measures are necessary to protect the policy holders. It is quite probable that, as a result of this excitement, very unwise legislation may be proposed all over the country next January, and it was thought possible that if Congress, after careful deliberation, should adopt an insurance

code, plain and simple and brief, covering all the points that need to be covered, and if that code should have the indorsement of the convention of insurance commissioners that will meet in this city in September—and that it will have this indorsement is somewhat foreshadowed from the fact that this committee of fifteen gave their general approbation to this bill—if that bill should be adopted by Congress and get the approval of the convention of insurance superintendents, there would not be a certainty, but there would be a very strong probability that it would be adopted by most of the States of the country, and a great deal of trouble would be saved to the life insurance companies and great injury to life insurance interests would be prevented.

As to the District of Columbia, I do not know that anybody is particularly concerned about the District of Columbia. We are represented here and do a very good business here, and we will be very glad to continue and intend to continue here; but if under peculiar circumstances we had to withdraw from the District of Columbia we would not regard that as a very serious contingency.

There is some inquiry made as to what is back of the bill, and if there is anything back of it, there is very bad faith on the part of Mr. Ames and other gentlemen, and I do not think anybody would attribute bad faith to Mr. Ames. I heard his address in Chicago, and he said it was simply to set up here a model that would be likely to be adopted throughout the country, which would secure more uniformity and better legislation than could otherwise be secured in many parts of the country. In States where there are no local companies life insurance might not be very well understood and an imperfect law might be passed which would cause great trouble.

So much in regard to the law. I had hoped that this discussion would take the form of a discussion in the order of the sections of the bill. The previous speakers have spoken of the bill, but their remarks have been spread over such a large surface that even with the trained attention of a life insurance expert it would be difficult to follow them. It would be necessary to have the text of the bill before one and follow it line by line.

If we are done with the general discussion of the bill, if the suggestion is not deemed impertinent, Mr. Chairman, I think we would save a great amount of time and understand each other better if we followed the practice of taking up the bill item by item; and if you so permit, when we come to a section farther on, I will ask your indulgence to speak concerning it.

MR. PARKER. Would it be convenient to you to direct attention yourself consecutively to sections of the bill that you think need amendment?

I propose to suggest certain amendments to that statutory policy, but before that I want to say that I do not think there is any need of a uniform policy whatever. It has been argued that because the fire companies have a statutory uniform policy, therefore the life insurance companies should have; but the conditions of the two businesses are so entirely different that the example of the fire companies has no force whatever.

What is the purpose in having a statutory policy? As I gather from a gentleman who is very much interested in this part of the

bill, the object is to prevent the issue of deceptive policies. There are some companies that have as many as two to three hundred policies. I would not like to claim for myself any special intelligence, but I think that I have a fair understanding of my business, and I have very frequently met with policies that required the utmost attention on my part to understand what they were. They were framed in such a way as to make it possible to misrepresent them, and that they have been misrepresented is matter of common knowledge.

Mr. ALEXANDER. Mr. Chairman, it is now twenty minutes to 5 o'clock. Supposing Mr. Ashbrook continues his argument in the next twenty minutes in a generic manner, as to whether we need such a bill, covering the questions heretofore mentioned. I know they do not need to be repeated. He has given the reason that has been given several times before for this legislation—that it might serve as a sort of a signboard for State legislation—but perhaps he may have some reasons in mind other than that which might possibly go in, as to having a code of insurance that is to apply only in this District, where you may judge from what Mr. Rhodes said they do not need very much, and do not need it at all now.

Mr. ASHBROOK. I think that is a rather strong conclusion from Mr. Rhodes's remarks. He perhaps intimated that they might get along without any change in the law.

Mr. ALEXANDER. Well, put it that way, then.

Mr. ASHBROOK. But that it might be better to have a larger body of well-digested law here. I have not made a study of the present code of the District of Columbia, but I would suppose that it is, in contrast with the laws of most States, quite imperfect, and that the code of this District should be improved, I should think, would be a desirable end in itself. I have had an experience of a great many years in honorable connection with the several legislatures. I have had to oppose I do not know how many exceedingly vicious bills—some of them prompted by ignorance and some of them prompted by an unworthy motive—and I have had very great difficulty, indeed, in opposing bills—bills that would have resulted in very great injury to the business, bills imposing very foolish and onerous requirements. If we could have a body of laws which would carry with them the weight of authority—not legal, but moral, because those laws had been adopted by the General Government after careful deliberation and for the purpose of setting a high standard, and particularly if the administration of those laws was committed to one of the great Departments of the General Government—it is very probable the laws would be generally adopted throughout the country. So much for the direct good. Equally important would be the prevention of hasty legislation and the passage of laws conflicting with those of other States. I think I state the experience of nearly all the insurance officials in the United States when I say that they lose flesh during the two or three months in which the legislatures are in session.

Mr. BRANTLEY. Would that result follow?

Mr. ASHBROOK. This thing is an experiment, and if it is an experiment from which in the trial no harm could come, I think it would be worth while trying the experiment. I think the District of Columbia would have an admirable insurance department, and I do not

think that the expenses of that department would be very greatly increased over what they are now, because these things that were referred to as examinations, in very many cases, would pay for themselves. During the experimental period in which the thing was being tested I do not think that the expenses would be very great. I think perhaps it would be a harmless experiment, and it might result in very great good to the insurance of the country.

Mr. ALEXANDER. You would not place very great emphasis upon the examination made of the various companies by the United States, or by the officials representing the United States?

Mr. ASHBROOK. There are several insurance superintendents who are my personal friends, and for whom I have very great respect, and I have also very great admiration for their efficiency as insurance superintendents, but from my knowledge of the way insurance superintendents are selected the country over, and from their brief continuance in office, I think it is highly probable that this insurance department of the District of Columbia would be very much more ably managed. That is my opinion. I think there is very strong reason for that opinion, and I think that would be the opinion of the insurance officials themselves.

Mr. ALEXANDER. That is hardly borne out, is it, by the example of the examination of our national banks? Do you regard that as very much superior to the State supervision?

Mr. ASHBROOK. I have not knowledge of that matter sufficient for my opinion to be of any value.

Mr. STERLING (addressing Mr. Alexander). Would you think it was borne out in that experience?

Mr. ALEXANDER. Not on the national bank examination. That we always find out when the national banks fail.

Mr. ASHBROOK. I would just remark that the conditions are very different in a bank and an insurance company. A personal inspection and frequent inspection are not so necessary to determine the condition of a company as to determine the condition of a bank. If the insurance commissioner has before him the assets of the company and a complete record as to their liabilities his function is not a difficult one under the circumstances. I ought to say in justice to myself that I did not rise to discuss particularly the features of the bill, the general features of the bill, but to discuss the section in regard to the statutory policy.

Mr. PARKER. I should be very glad if you would go ahead in your own way. I would say that I notice that in the single suggestion that you make of striking out the statutory policy you strike out some thirty or forty pages of the bill, and the shortening of the bill is of so great importance in getting a bill through Congress that it is of the very first importance.

Mr. ASHBROOK. I was about to consider that when this gentleman honored me by asking me a question.

I do not think that there is any need of a statutory policy, and if any such provision is made in the law it should be made with very great care. The statutory policy requires that the dividend shall be applied in four different ways.

As a matter of fact, not as a matter of speculation, in 80 or 90 per cent of the payment of death losses the policy is of such small

amount that by experience there is only one way in which the beneficiary wants the money applied, and that is to receive it in a lump sum. Certainly 80 per cent of the policies issued are under \$5,000. One of the provisions of the bill is that that money shall remain in the hands of the company during the lifetime of the beneficiary at a rate of interest to be agreed upon, and the principal to be paid over to her heirs at her death. Now, suppose 3 per cent was the amount named, and I doubt very much whether any company would be rash enough, for a long period of thirty or forty years, to guarantee more than 3 per cent. She could not live on it, and would have to invade the principal, as is always done. Five thousand dollars would yield an annual installment of \$250 for twenty years. She could not live on \$250 and would have to invade the principal part of it. The other provision is that after she had taken the \$250 there should be an annuity continued to her as long as she should live. Then there is another provision that if a man did not want to use his dividend he could leave it in the hands of the company as a cash deposit, as in the case of a savings bank, the company agreeing to pay him interest on it, and just when he pleased let him draw it out. That is a function not contemplated in the management of a life insurance company. The company would have to guarantee the interest and the safety of the investment, and would have no compensation for the labor and the responsibility of its trust continued over an indefinite period. That is very rarely required. If, in an exceptional instance, a man wanted to leave his money in the hands of the company for a year or two the company would probably accommodate him.

Now, my simple suggestion is that with respect to the ordinary life policy—and the same suggestion would apply to limited-payment life, endowment, and term—there should be a life policy A and a life policy B. The life policy A should correspond to B in all particulars except that the money should be paid in a lump sum. When a man is insuring, if he wants B he can ask for B. Very few people would ask for B. The man receiving A would have a policy that he could easily understand. The company would not be put to the labor of filling in all these details as to the amount of installments and rate of interest and what not in 80 per cent of which these provisions would be entirely unnecessary. Is there any need of a standard?

I think every life insurance actuary in the room will say that the provisions of that bill as to the manner in which dividends can be applied would require very careful consideration in order to understand.

Mr. AMES. If I may be permitted to interrupt the speaker, the reason for the standard forms in this bill—I think Mr. O'Brien will bear me out—was because they were adopted by the Armstrong committee, and they were inserted for the purpose of uniformity. There is a provision on page 80 which differs from the Armstrong bill, permitting any other kind of a policy.

Mr. ASIIBROOK. Any other kind of a policy, but not any other form in the kinds enumerated. You have referred to that before, and I have looked at the bill, and I do not like to correct you, but I think it is any other kind of insurance. The kinds are ordinary life, limited-payment life, endowment, and term policies, and the forms are prescribed for them.

A BYSTANDER. Are there any other kinds?

Mr. ASHBROOK. Now, if there should be any other kinds the application may be made to the commissioner to obtain the permission, but not to vary these other forms.

Mr. AMES. There is another provision; there is stricken out "or any other policy."

Mr. ASHBROOK. I would suggest to Mr. Ames if that is struck out it nullifies entirely the previous regulation. If the company did not wish to comply with the law as to the statutory policy it had only to apply to the commissioner to obtain his permission to issue any kind of a policy that it wished to issue.

Mr. AMES. I think that is about what I have stated, that these forms were to serve as standards for legislation in other States.

Mr. ASHBROOK. You are probably aware that the form in New York is not imposed upon other States.

Mr. AMES. In reference to this code, it would serve as a model for the States. We wanted to have a full code so that any other State seeking legislation should have the advantage of whatever legislation there was.

Mr. ASHBROOK. In my opinion all that could be covered by requiring that the commissioner should be furnished with any new form whatever, whether those be many or few; and if, in the judgment of the commissioner those forms were deceptive or not clear, I think a notice to the company would have a very decided effect. If it did not produce that effect I think a comment in the next following annual report of the commissioner, which would be perfectly proper, would be a sufficient corrective. I think that a policy should be as simple in terms as possible, and I wish that I had a policy of every company doing business in the United States of the plans enumerated in the bill that I might pass them around this table and ask you gentlemen to read them over and observe how exceedingly simple they are in their forms. There is no language employed there that the least instructed mind could not understand. They are exceedingly simple and the conditions in those policies are extremely liberal.

I differ with some gentlemen whose opinions I am bound to respect, but I think that the limitation not only to form of policy, but also to what kinds of insurance may be granted, is very unwise. Twenty years ago if this statutory policy had been adopted it would not have permitted these options that are spoken of here. Those options have been a development. Whatever the form of the policy, or whatever the amount, it was paid into the hands of the wife, and she immediately had to invest possibly \$20,000 or \$30,000 or \$40,000, and however intelligent she might have been, she was not qualified for that duty, and loss possibly followed. There was devised the installment policy. Suppose the policy was for \$20,000; there would be paid to the widow an income of possibly \$1,200 a year, possibly a little more than that, for twenty years, when it would expire. If there were any apprehension lest she would be without support at that time, there could be attached to it an annuity, continuing the payment as long as she lived. All this has been evolved by the companies. Competition has brought that out. Companies vie with each other in the cost of insurance and the adaptation of life insurance to the needs of the insurer. This puts a stop on that. If the company originates a new and exceedingly wise plan, instead of

submitting it to the public it has to submit it to the commissioner, and I think very likely it might have to be submitted finally to the commissioners of all the States. If this bill becomes a standard law, I mean if it were adopted by all the States, then if the company wanted to adopt a new plan of insurance they would have to go to every commissioner and ask his judgment on it. The purpose of the statutory policy is to secure simplicity and to avoid imposition on the public by putting out forms of insurance respecting which deceptive statements could not be easily made and putting out those that could be easily understood. That is the only good purpose of a standard form of policy.

Mr. PARKER. Might I ask one question? You said the most important thing was to prevent deferred dividends. Was it your idea that any proper law should prevent deferred dividends only with local companies, or should prevent any company doing business in the District which should have the system of deferred dividends?

Mr. ASHBROOK. Mr. Chairman, that is practically a closed question, for the reason that, with exceptions so few that I need not consider them, every company is doing business in New York. It is the great field of life insurance of the country and the great commercial metropolis and a company is not likely to retire from New York; and if we continue in the State of New York we are made subject to a law which forbids absolutely deferred dividends in the future. Dividends must be declared.

Mr. PARKER. It is not necessary here?

Mr. ASHBROOK. Yes, sir; it is not necessary here at all, and I made this remark not in discussing this bill, but in explaining why I do not think any legislation is necessary.

Mr. PARKER. If legislation is adopted here, would you make that legislation to prevent deferred dividends only as to home companies, or to prevent only companies which had deferred dividends from doing business here?

Mr. ASHBROOK. I am not a lawyer, but I venture the remark that you gentlemen who are lawyers will better understand than I that it is a serious matter for a State to undertake to direct the details of the affairs of a corporation of a sister State, and I think it is unwise to enact laws applicable to companies of other States, except only such laws as insure safety and solvency. I do not think it should undertake to legislate in detail for companies created by another Commonwealth.

Mr. PARKER. I beg your pardon for interrupting you.

Mr. ASHBROOK. I was about to apologize to you gentlemen——

Mr. PARKER. You have not concluded?

Mr. ASHBROOK. I thought that I had exhausted your patience.

Mr. PARKER. Not at all. We would like any point that you have.

Mr. ASHBROOK. I have prepared a brief here, in which I have urged the reasons for the other changes which I would propose, and I think perhaps you would better comprehend them if I had the pleasure of putting a copy in the hands of each of you.

Mr. PARKER. If you will put it in the hands of the stenographer it will be printed.

Mr. ASHBROOK. I will do that, and I will conclude without burdening you further by saying—and I fear it is perhaps a lame apol-

ogy—that my interest in this matter is so great that it has betrayed me into rather more extended remarks than I had intended, and I feel that I owe you an apology.

Mr. CRAIG. Might I ask Mr. Ashbrook one question before you close, Mr. Chairman?

Mr. PARKER. Yes.

Mr. CRAIG. In condemning tontine insurance and the extravagance of the company which was developed in the Armstrong investigation, do you attribute those scandals to the extravagance or to the deferred dividends?

Mr. ASHBROOK. If you will pardon me, I did not catch your question.

Mr. CRAIG. I am not interested in deferred dividends.

Mr. ASHBROOK. No.

Mr. CRAIG. In your opening remarks I understood you to say that the foundation of the evil was deferred dividends, and from that crept on the extravagance in some of the companies.

Mr. ASHBROOK. No, sir; I did not say that. I said that deferred dividends afforded the opportunity for extravagance, and that the other abuses followed naturally in the train. I think the system of deferred dividends was the original source of the trouble.

Mr. CRAIG. The question that I would like to ask is, If the expenses were limited according to the present New York law, could any of the scandals which were developed have happened, even under a deferred-dividend plan?

Mr. ASHBROOK. That is a very important question. My answer to that is that the evils could not have occurred to the same extent. I think the system would have been open to very grave objection. The evils could not have occurred to the same extent, for the very obvious reason that if the company was restricted in its expenses it would not have spent so much money. They have been practically unrestricted up to this time, and they have had unlimited deferred-dividend funds which they could divert, and they were not dependent on the ordinary loading upon their policies. If a company for a long period of years should greatly exceed its loading it would probably run into trouble. If the limitation of expenses which is now imposed by the Armstrong bill had been imposed twenty years ago—and it was about that time that the semitontine had its origin—we could have had a different history. Does that answer your question?

Mr. CRAIG. Yes.

Mr. STERLING. As I understand you, the limitation is simply to this extent, that they can not go beyond the loading?

Mr. ASHBROOK. Yes.

Mr. STERLING. They must confine their expenses of securing the policy to the loading; and are they limited to the amount of loading, under the law?

Mr. ASHBROOK. They are not limited under the law to any loading, but they are practically limited. If a company were to increase its rates of premium it would put itself at a very great disadvantage in competition. It would find it extremely difficult to get business. It is not a legal, but it is a practical prohibition. There have been a great many arbitrary things done by the Armstrong committee—inde defensible things, I think, some of them—but they stopped short

of prescribing the amount of the loading. The loading varies very much, according to the judgment of the company, but there is no legal prohibition. But I think that I am justified in saying that there is a practical prohibition, that a company would not dare to put up their rates of premium.

Mr. PARKER. If there are no further questions to be put to Mr. Ashbrook, the committee will stand adjourned until 10 o'clock to-morrow morning.

Thereupon, at 5 o'clock p. m., the committee adjourned until 10 o'clock to-morrow, Tuesday, May 15, 1906.

PROPOSED AMENDMENTS SUBMITTED BY MR. AMES.

- Page 1, line 5, strike out the word "insurance."
- Page 1, line 12, insert, after the word "or," "if any."
- Page 2, line 6, put semicolon after the word "Columbia."
- Page 2, line 17, insert, after the word "purpose," "required or."
- Page 3, line 6, add, after the word "act," "which are not by their terms limited to domestic companies."
- Page 5, line 4, strike out, after the word "Department," "of such."
- Page 5, line 5, strike out the words "device as the President may approve."
- Page 5, line 16, strike out, after "it," the word "expedient" and insert in place thereof "in the interest of the policy holders."
- Page 5, line 19, strike out, after "it," the word "expedient" and insert in place thereof "in the interest of the policy holders."
- Page 5, line 23, strike out, after "any," the word "other."
- Page 5, line 24, insert, after the word "company," "doing business in such State and."
- Page 6, line 4, strike out, after "any," the word "other."
- Page 6, line 9, strike out, after "any," the word "other."
- Page 8, line 4, insert, after the word "statements," "of assets and liabilities, receipts and disbursements."
- Page 8, line 19, insert, after the word "any," "governmental."
- Page 8, line 20, strike out the words "issued by the superintendent."
- Page 9, line 3, insert, after the word "mentioned," "and except for loans upon policies."
- Page 10, line 23, strike out the words "a statement separately showing the," after the word "expenses."
- Page 10, line 24, strike out entire line.
- Page 10, line 25, strike out entire line.
- Page 11, line 1, strike out entire line.
- Page 11, line 2, strike out the words "calculation has been made."
- Page 11, line 2, insert, after the word "of," "premiums and of."
- Page 12, line 6, insert, after the word "cash," "in office and in bank."
- Page 14, line 24, strike out the word "fifteenth" and insert in place thereof "first."
- Page 14, line 25, strike out the word "January" and insert in place thereof "March."
- Page 15, line 4, strike out the word "March" and insert in place thereof "April."
- Page 15, line 16, strike out, after the word "on," "existing."
- Page 15, line 16, insert, after the word "policies," "issued prior to the first day of January, 1907."
- Page 15, line 18, strike out the word "hereafter."
- Page 15, line 18, insert, after the word "issued," "after the 31st day of December."
- Page 15, line 24, strike out, after the word "investments," "approved by the commissioner."
- Page 16, line 4, strike out, after the word "policies," the word "purporting," and insert in place thereof "appearing clearly on their face."
- Page 16, line 5, insert, after the word "valued," "during their first year only."

Page 16, insert the following paragraph after the word "valuation," in line 11:
 "The insurance commissioner may vary the standards of interest and mortality in the case of corporations from foreign countries as to contracts issued by such corporations in other countries than the United States; and in particular cases of invalid lives and other extra hazards, and value policies in groups, use approximate averages for fractions of a year and otherwise, and accept the valuation of the department of insurance of any other State or country if made upon the basis and according to the standards herein required in place of the valuation herein required if the insurance officer of such State or country accepts as sufficient and valid for all purposes the certificate of valuation of the superintendent of insurance of this State."

Page 16, line 21, strike out the word "immediately" and insert in place thereof the word "directly."

Page 17, line 6, insert, after the word "or," "at least."

Page 17, line 12, strike out the words "and shall."

Page 17, line 13, strike out the entire line.

Page 21, line 9, strike out the words "this section" and insert in place thereof "the law, provided, however, that this section shall not apply to companies organized under section 24 of this act."

Page 21, line 11, strike out, after the word "company," "exclusive of its capital."

Page 21, line 12, insert, after the word "liabilities," "exclusive of its capital."

Page 23, line 6, insert, after the word "companies," "not exceeding \$30 per \$1,000,000 of its insurance or fraction thereof for the first \$10,000,000 of insurance, and not exceeding \$10 for each million of insurance in excess of that amount."

Page 23, line 7, strike out, after the word "valued," "for receiving and filing certificates of."

Page 23, line 8, strike out entire line.

Page 23, line 9, strike out "Territory, fifty dollars."

Page 26, line 21, strike out entire line.

Page 26, line 22, strike out entire line.

Page 26, line 23, strike out entire line.

Page 31, line 9, strike out the words "and no."

Page 31, line 10, strike out entire line.

Page 31, line 11, strike out the words "to issue any participating policies."

Page 31, line 14, strike out the words "as provided in this chapter" and insert in place thereof "This section shall not apply to annuities or to paid-up or temporary and pure endowment insurance issued or granted in exchange for capital or surrendered policies."

Page 31, line 15, strike out the word "capital" and insert "assets."

Page 31, line 18, insert, after the word "all," "in other than life companies."

Page 31, line 18, strike out the word "capital" and insert "assets."

Page 32, line 12, strike out the words "of not less than five per."

Page 32, line 13, strike out the words "centum per annum."

Page 32, line 13, strike out the word "two" and insert "three."

Page 32, line 19, strike out the word "capital" and insert "assets."

Page 32, line 21, strike out the word "capital" and insert "assets."

Page 33 strike out lines 1, 2, 3, 4, and 5 and insert in place thereof "Eighth. Any life insurance company may lend a sum not exceeding the lawful reserve which it holds upon any policy on the pledge to it of such policy and its accumulations as collateral security."

Page 33 strike out lines 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 and insert in place thereof "Ninth. Any domestic company doing business in foreign countries may invest the funds required to meet its obligations incurred in such foreign countries and in conformity to the laws thereof in the same kind of securities in such foreign countries that such corporations is by law allowed to invest in in this District of Columbia."

Page 33, line 18, insert, after the word "officers," "of a domestic company."

Page 33, line 21, insert, after the word "if," "such."

Page 34, line 3, strike out the last word and insert "a domestic."

Page 35, line 8, strike out the word "any" and insert "a domestic."

Page 35, line 10, insert, after "tion," "its corporate powers shall thereupon expire."

Page 35, line 11, strike out the word "its."

Page 35, line 12, strike out the words "corporate powers shall thereby expire."

Page 35, line 21, insert, after the word "no," "domestic."

Page 36, line 11, insert, after the word "every," "domestic."

Page 36, line 11, strike out the word "or."

Page 36, line 12, strike out entire line.

Page 36, line 13, strike out the word "Columbia."

Page 36, line 17, insert, after the word "reelection," "provided that at least a majority of said board shall be residents of the District of Columbia."

Page 36, line 19, insert, after the word "holder," "whose insurance shall be in force and shall have been in force for at least one year prior thereto."

Page 37, line 2, insert, after "section 36," "subject to the provisions of section 34 of this act."

Page 37, line 4, strike out the words "or by the" and insert "seconded in writing."

Page 37, line 5, strike out the words "nomination of any other" and insert "by at least one hundred."

Page 37, line 5, strike out the word "holder" and insert "holders."

Page 37, sec. 7, add the following paragraph: "The governing board of the company shall appoint a suitable number of inspectors of election, who shall be qualified voters and shall be paid for their services by the company. Immediately upon the closing of the polls the inspectors shall proceed to the examination of the ballots and shall canvass the vote lawfully cast. The canvass shall proceed from day to day and the inspectors shall certify the result to the company as soon as it is completed."

Page 38, line 5, strike out the word "the" and insert the word "such."

Page 38, line 19, strike out, after the word "election," "but no employee."

Page 38, line 20, strike out entire line.

Page 38, line 21, strike out the words "of the company shall act as proxy for any member."

Page 38, line 21, strike out the word "nor" and insert "and."

Page 38, line 22, strike out the words "shall any" and insert "no."

Page 39, line 3, strike out the word "any," the third word in the line, and insert "said."

Page 39, line 17, strike out the word "the" and insert "said."

Page 40, line 14, after the word "election," add the following: "Such ballot shall be signed by the insured, and all ballots cast as herein provided shall be forwarded to the company, on or before the date of the election, at the home office of the company for verification of their legality in the same manner as if cast at home office."

Page 40, line 18, strike out the words "or by mail."

Page 41, line 10, insert, after the word "when," "at least five per centum and not less than."

Page 41, line 10, strike out the words "or more members" and insert "policy holders residing in any one State."

Page 41, line 11, strike out the word "the," when last used in this line, and insert "said."

Page 41, line 17, insert, after the word "and," "not less than five per centum and."

Page 41, line 18, strike out the word "members" and insert "policy holders."

Page 41, line 24, strike out the words "five hundred" and insert "the preceding per centum and number of."

Page 42, line 9, insert, after the word "election," "within four months after date of such election."

Page 42, line 10, strike out section 47 in its entirety and insert the following: "Annual distribution of dividends." "SEC. 47. That every domestic life insurance company shall provide in every participating policy issued on or after the first day of January, 1907, that such policy shall be credited annually of its share of the apportionable surplus. The share so apportioned shall be applied as provided in the policy, either in reduction of the succeeding year's premium or to the purchase of additional benefit or paid in cash or left with the company to accumulate, provided such accumulation shall be withdrawable in cash upon any anniversary of the policy."

"A foreign company which shall not provide in every participating policy issued or delivered in the District of Columbia on or after the first day of January, 1907, that such policy shall be credited annually with its share of the apportionable surplus as herein provided for domestic companies shall not be permitted to do business within the District of Columbia."

Page 44, line 7, strike out section 48 in its entirety and insert the following: "Sec. 48. Contingency reserve.—Any domestic life insurance corporation may accumulate and maintain, in addition to an amount equal to the net values of its policies computed according to the standard adopted by it under section 84 of this chapter, a contingency reserve not exceeding the following respective percentages of said net values, to wit: When said net values are less than one hundred thousand dollars, twenty per centum thereof, or the sum of ten thousand dollars, whichever is the greater; when said net values are greater than one hundred thousand dollars, the percentage thereof measuring the contingency reserve shall decrease one-half of one per centum for each one hundred thousand dollars of said net values up to one million dollars; one-half of one per centum for each additional one million dollars up to ten million dollars; one-half of one per centum for each additional two million five hundred thousand dollars up to twenty million dollars; one-half of one per centum for each additional twenty-five million dollars up to seventy-five million dollars; and if said net values equal or exceed the last mentioned amount, the contingency reserve shall not exceed five per centum thereof: *Provided*, That as the net values of said policies and the maximum percentage measuring the contingency reserve decreases such corporation may maintain the contingency reserve already accumulated hereunder, although for the time being it may exceed the maximum percentage herein prescribed, but may not add to the contingency reserve when the addition will bring it beyond the maximum percentage: *Provided, however*, That nothing herein contained shall be construed to effect any existing surplus or contingency reserve held by any such corporation save that whenever the existing surplus and contingency reserves, exclusive of said net values and of all accumulations held on account of existing deferred dividend policies or groups of such policies, shall exceed the limit above mentioned it shall not be entitled to maintain any additional contingency reserve: *Provided further*, That for cause shown the commissioner of insurance may at any time and from time to time permit any corporation to accumulate and maintain a contingency reserve in excess of the limit above mentioned."

Page 44, line 9, insert, after the word "no," "domestic."

Page 44, line 9, strike out "doing busi-."

Page 44, line 10, strike out "ness in the District of Columbia."

Page 44, line 25, strike out "doing busi-."

Page 45, line 1, strike out "ness within the District of Columbia."

Page 47, line 14, strike out the word "the" and insert "a."

Page 47, line 15, strike out entire line.

Page 47, line 16, insert before the word "each," "statement that."

Page 47, line 16, strike out "to be issued here."

Page 47, line 17, strike out "under."

Page 47, line 17, strike out the word "this" and insert "the."

Page 48, between lines 16 and 17 insert the following:

"Sec. 54. If any policy of life insurance (other than a term policy for twenty years or less), issued on or after January first, nineteen hundred and seven, by any domestic life insurance corporation, after being in force three full years, shall by its terms lapse or become forfeited by the nonpayment of any premium, or any note therefor, or any loan on such policy, or of any interest on such note or loan, the reserve of such policy, computed according to the standard adopted by said company in accordance with section eighty-four of this chapter, together with the value of any dividend additions upon said policy, after deducting any indebtedness to the company and one-fifth of the said entire fund, or a sum equal to two and one-half per centum of the face of said policy, if said sum shall be more than the said one-fifth shall upon demand, with surrender of the policy, be applied as a surrender value, as agreed upon in the policy, provided, that if no other option expressed in the policy be availed of by the owner thereof, the same shall be applied to continue the insurance in force at its full amount, including any outstanding dividend additions, less any outstanding indebtedness on the policy, so long as such surrender value will purchase non-participating temporary insurance at net single premium rates by the standard adopted by the company, at the age of the insured at the time of lapse or forfeiture: *Provided*, In case of any endowment policy, if the sum applicable to the purchase of temporary insurance shall be more than sufficient to continue the insurance to the end of the endowment term named in the policy, the excess shall be used to purchase in the same manner pure endowment insurance, payable at the end of the endowment term named in the policy, on the conditions

on which the original policy was issued: *And provided further*, That any attempted waiver of the provisions of this paragraph in any application, policy, or otherwise, shall be void: *And provided further*, That any value allowed in lieu thereof shall be at least equal to the net value of the temporary insurance or of the temporary and pure endowment insurance herein provided for. The term of temporary insurance herein provided for shall include the period of grace, if any."

Page 48, line 20, insert, after the word "any," "domestic."

Page 48, line 20, strike out "doing business within."

Page 48, line 21, strike out "this District."

Page 80, line 7, strike out, after the word "other," "kind of."

Page 80, line 15, strike out "a standard" and insert "an approval."

Page 81, to section 55, add the following: "Except those companies or associations now authorized to do business in said District and which shall have and maintain a reserve fund on their assessment policies or certificates equal to the net value of such policies or certificates, valued as one year term policies as provided in section 10 hereof," and

"*Provided, further*, That any existing domestic assessment company or association may, within the written consent of said commissioner of insurance and upon a majority vote of its trustees or directors, amend its articles of incorporation and by-laws to conform with this act, and upon so doing, and upon procuring the official certificate of said commissioner of insurance to transact business of insurance within the District of Columbia under such amended charter the said corporation shall be deemed so far as may be to have been incorporated under this act, and shall incur the obligations and enjoy the benefits hereof the same as though originally thus incorporated, and such corporation, under its charter as thus amended, shall be a continuation of such original corporation, and the officers thereof shall serve through their respective terms as provided in the original charter, but their successors shall be elected and serve as in such amendment provided: *Provided, however*, That such amendment or reincorporation shall not affect existing suits, rights, or contracts."

Page 81, line 22, strike out the words "but no officer or agent," together with lines 23 and 24, and insert "provided no one person act or vote as proxy for more than twenty members. All proxies shall expire within six months of their date."

Page 99, line 17, insert, after the word "company," "other than life."

Page 108, line 21, insert, before the first "the," at the beginning of the line, "the fee required therefor by section 19 of this act."

Page 109, line 3, strike out the words "the renewal" and insert "reissue."

Page 109, line 4, strike out the word "renewal" and insert "reissue."

Page 109, line 4, insert, after the word "of," "the stipulated fee."

Page 109, line 5, strike out "dollars."

Page 109, line 5, strike out the word "July" and insert "May."

Page 116, insert, after section 106, the following: "Sec. 107. Any person knowingly receiving any rebate or allowance or deduction from any premium or any valuable thing, special favor or advantage whatever, as an inducement to take any policy of life insurance, not specified in the policy, shall be guilty of a misdemeanor."

Suggested alterations in the form of standard policy as contained in House bill 17760 (pp. 49 to 80); also to section 47 (pp. 43 and 44).

Lines 15 to 24, on page 51, describe the manner in which dividends shall be used.

Lines 1 to 4, on page 52, read as follows: "Unless the holder of this policy shall elect otherwise within three months after the mailing by the company of a written notice requiring such election, the dividends shall be applied to purchase paid-up additions to the policy."

The general, probably the uniform, practice of companies which have paid annual dividends has been to make the dividend declared payable at the next anniversary of the policy. When notice of the premium falling due at the next anniversary is sent, there is also sent a statement of the dividend. There would seem to be no need whatever to send a previous notice of the dividend, as seems to be required by the lines just quoted and also by lines 8 to 18 of section 47, page 43. Nor is there any need to allow so long a period as three months in which the policyholder shall determine how he wishes the dividend applied. If he wishes the dividend used to reduce his premium, he will

remit a check for the amount of the premium less the dividend. If he wishes the dividend applied to buy an addition to his policy, he will remit the full amount of the premium. There is no conceivable reason why there should be two transactions at different times.

If a policy holder were to decide to take a new policy, it would be necessary for him to be examined. A dividend addition corresponds to a new policy, and properly a policy holder should be examined to obtain the privilege. It is submitted that the policy holder would be sufficiently protected if he were allowed at the time of the first dividend the privilege of buying the addition, without examination, and of having this privilege continue so long thereafter as he might desire to apply his dividends in this way. If, however, at the time of the first dividend he did not embrace the privilege, or having embraced it he should at some time in the future discontinue it, an examination should be required.

One of the four methods of applying the dividend is the privilege of allowing the dividend to remain as a deposit with the company at a rate of interest agreed upon. This is a new idea entirely, not called for by any public demand, and it would subject a company to the grave responsibility of investing the money so deposited and guaranteeing the investment without any compensation for doing so. In the absence of any demand whatever for such a novel feature, it should not be imposed upon the company.

The following amendments are therefore proposed to the standard forms for ordinary life, limited-payment life, endowment, and term policies, and to section 47 (pp. 43 and 44):

Strike out lines 17, 18, 19, and line 20 to the word "or," on page 51, in the standard form for ordinary life policy, and change the numbers of the two following options, respectively, to (2) and (3).

Strike out lines 1, 2, 3, and 4, on page 52.

Also, similar amendments to the standard form for limited-payment life policy. (See lines 2 to 12, on page 59.)

Also, similar amendments to the standard form for endowment policy. (See lines 4 to 14, on page 66.)

Also, similar amendments to the standard form for term policy. (See lines 22 to 25, on page 74, and lines 1 to 7, on page 75.)

Strike out on page 43, section 47, lines 3, 4, 5, and line 6 to the word "or."

Strike out on the same page, section 47, line 8 after the word "thereto," and lines 9, 10, 11, 12, 13, 14, 15, 16, 17, and line 18 to and inclusive of the word "insured."

Strike out in section 47, page 43, the words "respectively, either," on line 19, and on line 20, after the word "December," and line 21 and line 22 to and inclusive of the word "policy."

After the word "completed," on line 21, page 44, section 47, insert: "A policy holder shall at the time of his first dividend have the right, without medical examination, to elect that his dividends shall be applied to purchase paid-up additions to his policy. If, however, he should not make the election at that time, or, having made it, should subsequently use his dividend in any other way, a medical examination will be necessary to acquire the right to apply his dividends to buy paid-up additions to his policy."

Additional amendment to section 47, page 42.

Section 47 apparently requires that when an annual distribution of surplus is made, every policy on the books of the company at that time shall share in the distribution. It is suggested that the section should be amended so that only policies upon which two annual premiums have been paid should share in the distribution. In the past a number of annual dividend companies have paid dividends at the end of the first year, but such dividends were purely artificial. The first expenses of obtaining the policy, plus the share in the mortality expense for the year, plus the reserve for the year, exhausted the premium; in point of fact exceeded the premium. Consequently there was no surplus on the policy. If a dividend were paid, it was practically at the expense of the older policies. Recently a law was passed in New York limiting the expense of obtaining the business; but even under that limitation there would be no surplus. It is submitted that it is unwise to enact a law compelling a division on one-year-old policies when it is known in advance that no surplus could exist. It is recommended, therefore, that after the words "nine hundred and

—," on line 25, page 42, there shall be inserted the words "upon which two annual premiums had been paid."

Respecting the provision in the standard forms for ordinary life, limited-payment life, endowment, and term policy for modes of settlement when the policy becomes a claim by death or maturity.

The average amount of policies is considerably less than \$5,000. In nearly every case of a small policy, and it has been shown that such policies constitute the vast majority of policies issued, the only mode of settlement desired is the payment of the amount in a lump sum. Very rarely would it be desired that the small amount should remain permanently as a deposit with the company, or should be paid to the beneficiary in small annual installments extending over a series of years, or that an annuity should be payable to the beneficiary after these installments had ceased. The modes of settlement just described are desired only for a comparatively limited number of policies for large amounts of insurance. The description of these modes of settlement involves a great multiplication of words and, however happily expressed, is not easily understood by the average policy holder. It is suggested, therefore, that for each of the four kinds of insurance, namely, ordinary life, limited-payment life, endowment, and term, there should be two standard forms, designated, respectively, "A" and "B," the forms to be identical, except that in Form A the mode of settlement shall be the payment of the amount of the policy in a lump sum. The two important points gained would be that to the great majority of policy holders the form of policy would be much more simple and much more easily comprehended, and the company would be saved an enormous amount of clerical expense in the filling out of the policies. In Form B it would be necessary to fill in in each case the details of the amount of installments, etc. It is believed that this proposed change would more certainly accomplish the purpose in the adoption of standard forms of policy. As has been explained, Form A would be a simpler document, more easily comprehended. The premiums on both kinds of policy would be the same.

COMMITTEE ON THE JUDICIARY,
Tuesday, May 15, 1906.

The committee this day met, Hon. R. W. Parker in the chair.

**ADDITIONAL STATEMENT OF MR. JOSEPH ASHBROOK, MANAGER
PROVIDENT LIFE AND TRUST COMPANY, PHILADELPHIA, PA.**

Mr. BIRDSALL. This bill comprehends the scheme of all kinds of insurance, fire as well as life, within the District of Columbia?

Mr. ASHBROOK. Yes, sir.

Mr. BIRDSALL. Does your experience also go to fire insurance?

Mr. ASHBROOK. No, sir.

Mr. BIRDSALL. It is confined to life insurance?

Mr. ASHBROOK. Yes, sir.

Mr. BIRDSALL. What you said in reference to a standard policy was particularly with reference to life insurance?

Mr. ASHBROOK. The bill does not provide a standard form of policy for any other than life insurance.

Mr. BIRDSALL. It is your idea that a company should be permitted to come here with such a form of life insurance policy as they have adopted elsewhere?

Mr. ASHBROOK. I intimated that there might be a restriction in some form as to the kind of insurance, but as to the forms of insurance indicated in the bill between life insurance, limited payment, endowment, and term insurance, I see no necessity for such an elab-

orate plan of policy as is provided in the bill. I think the present forms are very clear and answer every possible purpose. I think the object in putting in a standard form is to prevent the issue of policies which might be considered deceptive, at least that are susceptible of misrepresentation. There is no need for such guard as to the forms referred to there. All the policies existing to-day are so clear and explicit in terms that anybody can easily understand them.

The ACTING CHAIRMAN. They have been much improved of late years?

Mr. ASHBROOK. They have been constantly improved.

Mr. BIRDSALL. As to the policies to be issued by local companies incorporated under this code within the District of Columbia, do you think it would be advisable to have a standard policy?

Mr. ASHBROOK. I do not think that is a matter which would concern the companies outside.

Mr. BIRDSALL. But speaking generally on the proposition within the District of Columbia?

Mr. ASHBROOK. For the same general reasons that I do not think there is a necessity for policies for other companies I would not think there was a necessity for the District of Columbia.

Mr. BIRDSALL. Ought there not, then, to be a power within the commissioner to approve the policies presented?

Mr. ASHBROOK. Mr. Ames explained to me that the bill as amended provides for that very amply and in a most remarkable manner. It is really left largely, if not entirely, to his discretion. If the standard form which is presented in the bill is not satisfactory, not only as to kind of insurance but as to the words used, he can appear before the commissioner and request permission to issue another form.

Mr. BIRDSALL. My question sought to elicit your opinion as to whether it would be better to describe the form of policy or leave it with the commissioner?

Mr. ASHBROOK. My personal opinion—and I want to express it not as antagonizing the opinions of other people—my personal opinion is that no standard of policy is required.

The ACTING CHAIRMAN. You think the commissioner would have enough power without any fixed approval?

Mr. ASHBROOK. I stated yesterday that it would be a proper requirement that a company should be compelled to furnish immediately a copy of its form to the commissioner, and if in his judgment it was misleading and imperfect in phraseology or in its kind of insurance it was objectionable that a remonstrance on his part to the company would very likely be effective, and if it was not effective an allusion in his next annual report, which would be justified, would correct the evil.

The ACTING CHAIRMAN. Without any fixed statutory form?

Mr. ASHBROOK. That was my personal opinion.

Mr. BIRDSALL. Do you know what States have prescribed any standard form of life insurance?

Mr. ASHBROOK. I think I can say that previous to the recommendations of the Armstrong committee in New York, one of which recommendations was the statutory policy, that no State in the Union had ever prescribed the statutory form.

Mr. AMES. Mr. Chairman, yesterday there were some questions as to the corporate code in the District of Columbia. There have been strictures made upon this bill, owing to its length, and I proposed yesterday afternoon to bring to the committee this morning a copy of the District Code and let you see it in comparison with the corporation code provided for in the bill. That, perhaps, will explain part of the length of the bill.

The ACTING CHAIRMAN. We can do that. At the present there are gentlemen here from great distances, and it has been suggested that as far as possible we hear those gentlemen as to the advisability of this legislation. There are a great many men of ability here.

Mr. AMES. I think that would be advisable. I do not think I am stretching the point when I say I believe that every one here will agree that a proper code enacted into law in the District of Columbia would be of much benefit to the insurance companies and to the administration of insurance laws throughout the country, owing to the fact that probably each legislature, except that of the State of New York, will enact this coming winter a new insurance code for its State. If that legislation can be made uniform or a standard set for it, it would simplify matters a great deal, and I would suggest that you ask for a precise and definite expression of opinion as to the advisability of a proper code to be enacted into law in the District of Columbia.

The ACTING CHAIRMAN. I do not know that the committee ought to limit the gentlemen.

Mr. AMES. No; but make it specific.

The ACTING CHAIRMAN. I think the general policy of the committee is to hear these gentlemen on the main features of the bill or any particular parts they think should be amended or any suggestions they desire to make as to the subject of life insurance, and if you will introduce the gentlemen we will be very glad to hear them.

Mr. AMES. Mr. O'Brien desires to say a few words to the committee.

ADDITIONAL STATEMENT OF MR. THOMAS D. O'BRIEN, COMMISSIONER OF INSURANCE, ST. PAUL, MINN.

Mr. O'BRIEN. Mr. Chairman, if I may make a suggestion, I do not know whether it will meet with the approval of the other gentlemen who are here, but for myself I would like very much to give my views as to the general question and to be allowed to go home, and I think a large number of gentlemen here are in the same position.

As to the details of this bill, if a subcommittee of this committee, or the author of the bill, with the insurance commissioner of this District and some of the actuaries who have been so kind as to come here and express their views, would take this matter up, they could report to this committee a bill containing the amendments which we all concede are absolutely essential.

The ACTING CHAIRMAN. This is not exactly the time to make that disposition of the matter, but if you have anything further to say we would like to hear from you.

Mr. O'BRIEN. I have nothing that I could add.

Mr. Chairman, so far as the general principles are concerned, and what was said by Major Ashbrook yesterday afternoon, the situation

throughout the United States is such that cool, conservative, and prompt action by legislative bodies is almost essential, in my opinion, to the preservation of the business of insurance. The level-premium life insurance companies possess assets that are almost equal to the combined assets of the savings banks of the United States. There are, at a reasonable calculation, 25,000,000 people directly interested in insurance policies issued by companies of that character. A large number of policy holders have actually their entire savings in those policies. The business, I believe—and the insurance gentlemen present can contradict me if I am mistaken in that—is at the present time disorganized. Agents are compelled to give up their business and seek a livelihood in other ways. The agencies of the companies are being more or less destroyed; and, under those circumstances, it is to the interest not only of the policy holders, who have their savings invested in this matter, but it is to the interest of the business community generally, because these companies actually possess one-fortieth of the entire estimated wealth of the United States, and it is to the interest of the business community and to the policy holders and to the hundreds of thousands of men who have earned their living in the business of life insurance and who know no other business, that some sane and safe conclusion be arrived at.

If the District of Columbia adopts such a bill as this it will be a guiding light to all the States. Every conservative, intelligent, and honest commissioner will be able to say to the legislature in his State next winter, "Here is what the best talent in the United States has said is sufficient." The dignity of Congressional action can not be overestimated. The conservative force of a bill presented after consideration by these gentlemen can not be overestimated, and speaking from the standpoint of a person who is far from being an expert upon insurance, but who has given all of his thought to this subject for the last fifteen months, I say that I do not believe there is any higher duty resting upon the members of this committee at this time than to produce and present to the country, if possible, a model code. It is not a difficult work. It is not a difficult work, because there is at your disposal at this time the results of the most extraordinary investigation that ever took place in this country. There is at your command concrete results of those gentlemen's action and the views of those gentlemen who guided that investigation.

Upon the question of annual accounting, upon the question of standard policies, and upon the question of what the annual reports should contain you have right at hand the result of those gentlemen's action, which I believe everybody should indorse. Some of us absolutely believe that they go only sufficiently far in all of these matters; other gentlemen concede that, at least, they do not go too far. So the work is comparatively simple, and a subcommittee could arrange that. This bill was gotten together in such a manner that it is absolutely essential that there should be amendments. There is no doubt about that, but the fundamental principle that underlies the whole question is, after all, publicity. With publicity goes annual accounting. With publicity goes a proper system of making annual reports, and, as I say, those matters have been so fully gone into in the State of New York that it would be a comparatively simple matter to get up a bill along those lines. On policy forms

make it as liberal as Mr. Ames suggests. My idea is that this hearing ought to be confined to the question of whether or not it is advisable that a code of this sort be adopted by Congress, and, if that is determined, let Mr. Ames and these other experts get together and make the amendments that everybody says are necessary to this bill, and then a model code can be presented to Congress.

Mr. BIRDSALL. Assuming that a bill of this character should pass, providing for a central board of examination, because that is what it amounts to, so far as the States are concerned, would you feel justified—I do not ask you to answer the question from an official position—would you feel justified in recommending to the legislature of your State or of any State that the several commissioners be authorized to accept the examination made here as sufficient to authorize the companies to do business in their respective States?

Mr. O'BRIEN. I not only would recommend it, but I would certainly exercise my very best efforts to secure the passage of it.

Mr. BIRDSALL. It is your thought that the board would be removed from local influences and also possess powers and means of examination that are not at the command of the State commissioners?

Mr. O'BRIEN. Yes, sir. I think if that provision was there it would be of the greatest service to every State commissioner, and I see nothing in the bill that compels the commissioner to relinquish any of his own power.

Mr. AMES. Mr. Messenger, of the Travelers' Insurance Company, would like to address the committee.

The ACTING CHAIRMAN. We shall be pleased to hear Mr. Messenger.

STATEMENT OF MR. H. J. MESSENGER, ACTUARY, TRAVELERS' INSURANCE COMPANY, HARTFORD, CONN.

Mr. MESSENGER. Mr. Chairman, I represent the Travelers' Insurance Company, of Hartford, Conn., and I am the company's actuary. The Travelers' Insurance Company is a stock company doing a life, general accident, liability, and health business. Ninety per cent of its life business is nonparticipating. Its participating business is all less than three years old. I state these facts because the company represents a little different position from most companies. I had a brief prepared in regard to the original bill, or rather bill No. 18804, but I find that the amendments which have been proposed have so changed that bill that that brief is now of little value. Last night I looked over the amendments and I compared them with the bill, in order to get an idea of the changes, but I did not have time to give it the careful consideration which I should like, and more than that I found to a considerable extent, commencing with page 44, that the page and line references are not correct, probably due to some typographical error. So I was not able to fully study the changes.

Unless the committee prefers, I will first call attention to some special features in the bill, and, as I have not had the time to carefully study the changes, if in speaking it is evident that I am under a wrong impression as to the character of the amendments, I hope someone will correct me.

I first wish to refer to the standard policy. As amended, as I understand it, the standard policy applies only to domestic compa-

nies—that is, companies in the District of Columbia. But at the same time I understand that this bill is to be taken as a model, or at least some hope that it will be taken as a model, for State legislation. It is therefore desirable that in legislating for the District of Columbia there should be nothing highly objectionable in the bill if inserted in State legislation. Now, in the standard policy you will find at the bottom of page 52, under the head of "Options on surrender or lapse," "after this policy shall have been in force two full years it may be surrendered by the holder at any time prior to any default," etc., can be surrendered for paid-up insurance. That is amended, but not amended for the District of Columbia, as I understand it.

Mr. AMES. Yes, sir. Any form which the commissioner may approve would be permissible in the District. So if you did not choose to write one of those forms you would not be compelled to.

Mr. MESSENGER. Do I understand that is the case in the District of Columbia?

Mr. AMES. Absolutely.

Mr. STERLING. I do not understand that there are any amendments. There may be some amendments that have been suggested to this bill. The committee has not recommended any. I presume we would be glad to hear these gentlemen on the bill as it is, or any of the proposed amendments.

The ACTING CHAIRMAN. I think I can speak for the committee and say that they are all very glad to get opinions from the men who are really acquainted with this matter. We may not be able to get them here again.

Mr. MESSENGER. I will state that, as I understand it, the original bill provides that at the end of two years the policy holder may surrender his policy and obtain a paid-up policy, based on the value reserve. The amendment fixes the period at three years. What I wish to say is that, from the standpoint of the policy holder, not from the standpoint of the company, this requirement is unjust. No company has on hand at the end of the second year sufficient to give such a paid-up value unless the policy is of an exceptional character, and if any general paid-up values are given at the end of the second year, based upon the value reserve in the first place, it is an encouragement for men to give up their insurance, even when it is good insurance, and in the second place, worst of all, it is taking money from the policy holders who keep their insurance in force for a long period and giving it for a too large surrender value to those who withdraw at the end of the second year.

Mr. AMES. Before the convention at Chicago the president of one of the western companies testified that with a preliminary term policy, for which this bill provides—and it does not provide for a valuation on the select method—that there would be an equity belonging to the policy holder after one year's full payment had been made. How do you feel about that?

Mr. MESSENGER. If I understand that point as it appears in this bill—I am not sure that I do, because a great deal of this is very confusing—but if I understand that, if the preliminary term value is used it must be stated clearly in the policy that it is a preliminary term policy.

Mr. AMES. Yes, sir.

Mr. MESSENGER. And a company issuing the other form, representing it not as being preliminary term, does not wish to consider it as a preliminary term policy and does not wish to represent to the policy holder that it is a preliminary term policy.

Mr. AMES. In the preliminary term policy is there not an equity at the end of the second year?

Mr. MESSENGER. There may be in some cases; I will not deny it.

Mr. Chairman, on page 50, at the bottom of the page, under the heading "Conditions," you will find the following:

The policy may here provide for restrictions of liability by reason of travel, occupation, change of residence, and suicide, applicable only to one year after the issuance of the policy.

Now, I wish to say in regard to that provision, that as to standard risks, which have simply some temporary hazard, that may possibly be all right, but that does not cover all cases. The experience of the Travelers Insurance Company in this country, the accident experience, the most extensive experience of that kind in the world, shows that the extra hazard of death from accident in the case of a freight brakeman can not be covered by less than \$15 a year. Suppose under this form of policy we want to insure a freight brakeman. If we take him, we are bound to continue him as long as he pays the premium. We are limited to charge an extra premium to just one year, and probably \$100 would not more than cover the risk as an extra charge. What chance would we have of insuring a freight brakeman when we tell him that he must pay the regular premium and in addition to that he must pay \$100 before he gets his policy of \$1,000?

There are a great many cases where the hazard is excessive and continuous during the life of the policy, and you can not provide by one single payment when the policy is issued. There should be a provision so that in such cases the extra premium can continue through the hazard. If he changes his occupation to one unobjectionable we can remove the extra charge.

Mr. BIRDSALL. Does not this language limit the term?

Mr. MESSENGER. Yes, sir; that is just what I am objecting to.

Mr. STERLING. I do not think that applies or is intended to apply to the case which you speak of. I think it simply means that a policy would not be void after one year on account of suicide, change of occupation, travel, or things of that kind. I do not think it would apply where you would insure a brakeman if he was a brakeman at the time the policy was issued, but if a man should change his occupation or residence or commit suicide after one year that would not void the policy and would not relieve you from the liability.

Mr. MESSENGER. I think you assume there that we are going to charge a premium which includes the extra hazard, but with no mention of it in the policy. The applicant will always object to that.

Mr. BIRDSALL. Does not this provision go further than that? Suppose your company concludes that it would be unprofitable and dangerous to insure a man engaged in a powder house, they would put a restriction of that kind in the policy. I think that under this provision that would be good for only one year, that the second year he might engage in that business and continue to engage in it during the life of the policy?

Mr. MESSENGER. We would not give him a policy under those circumstances. That is what I am objecting to.

Mr. STERLING. But any person might change his occupation?

Mr. MESSENGER. Certainly; and when he changes his occupation to one that is not hazardous we take off the extra premium.

Mr. STERLING. I do not know whether that is a fair provision or not. Do not understand me to say that I think it is a fair provision. I do not think it relates to the insurance of a man already in a hazardous occupation. I do not think it is intended to cover a case of that kind.

Mr. MESSENGER. If that is so, then there is no provision for our insuring that class under possible conditions. I mean "possible" to get the business on terms such as we are willing to take the business.

The ACTING CHAIRMAN. You can not give cheap rates unless you can be sure to be guarded against extra hazardous occupations?

Mr. MESSENGER. We must have some way to guard ourselves, and we can not do it by a premium for just one year.

I wish to say just a few words with regard to substandard insurance.

The ACTING CHAIRMAN. Please give us the definition first.

Mr. MESSENGER. I will. I will say at the beginning that I regret there is no provision for substandard insurance in the Armstrong legislation. Substandard insurance is the insurance of under-averaged lives. In standard lives those gentlemen pass the examination of the medical examiner for the standard policies which the company is supposed to issue. A considerable percentage of those who present themselves for examination as applicants for insurance are substandard lives. I am making an underestimate when I say 10 per cent, and yet there is no provision for this class. They are men who most need insurance, and it is a perfectly legitimate business and a business which can be safely covered. Several companies have made quite a careful examination of this form of insurance. If there is no provision for this class of lives, they must be rejected. They must go without insurance. This can be easily provided for by allowing the company to place a lien upon the policy, which may be a fixed amount or it may be decreasing.

There are quite a number of companies which issue on substandard lives insurance policies stating that in case of death the first year a certain percentage—from 50 to 80 per cent—of the face of the policy will be paid. In case of death in the second year, a larger percentage, and gradually increasing, until, if the man lives fifteen or twenty years, in case of death his beneficiaries get the full amount of the policy. This is a safe feature for the company. I can see no logical objection to it. It will cover a large amount of business and cover a class which ought to be provided for.

Mr. AMES. If I may interrupt you, do you think the amendment proposed to page 16 would cover your objection—"The insurance commissioner may vary the standards of interest and mortality in the case of corporations," etc.?

Mr. MESSENGER. I was reading that last night, and I was unable to make anything out of it; that is, a portion of it.

The insurance commissioner may vary the standards of interest and mortality in the case of corporations from foreign countries as to contracts issued by such corporations in other countries than the United States;

I notice there is a semicolon. Then it says—

and in particular cases of invalid lives and other extra hazards, and value policies in groups, etc.

I do not know just the connection or force of the words "in particular cases of invalid lives." I do not know whether or not that refers to corporations from foreign countries only, and I would hesitate to say that is authority for substandard insurance. If it is intended as authority for substandard insurance it is all right.

Mr. AMES. It was so construed by the board of New York.

Mr. MESSENGER. Then I think it should be gone over carefully and rewritten, because it certainly is not properly constructed as at present.

As I said at the outset, the Travelers' Insurance Company is doing a life, general accident, liability, and health insurance business. I have not had time to carefully see what the law is in this bill in regard to companies doing different kinds of insurance, and have not had time to see whether those parts of the bill have been amended, but I wish to ask the privilege of submitting something on that point later if I find it necessary. I will state in general, however, that I see no reason why a company should not be permitted to do those different kinds of insurance, particularly if it already has the right to do so by charter, and I think it can be mathematically demonstrated that it is safer for a company to do half a dozen kinds of business than to confine itself to one kind, doing an equal amount of business. The chance of greater gain and also the chance of greater loss applies mostly to the company which does just one kind.

In regard to cash surrender values, as I understand it, this bill does not provide for cash surrender values, except in the indirect way that a policy holder can make a loan, and then when a year's interest on the loan has run out he can just let the matter drop, and the company has no remedy. In that way he keeps the loan, but that is an indirect way, and I most fully believe that it is best that a safe, conservative cash surrender value should be allowed by law in every policy except term policies, and in that case the reserve is not large enough to justify a cash surrender value. I wish to say, however, that I am not speaking in favor of large cash surrender values. Competition has already carried cash surrender values to a higher point than the real interests of the policy holders require.

Mr. AMES. Have you had a chance to read over the proposed amendment on page 48, making a new section—section 54:

If any policy of life insurance (other than a term policy for twenty years or less) issued on or after, etc.?

That provides for cash surrender values and also excepts the term "policies."

Mr. MESSENGER. Then I am speaking in favor of your amendment, and I am sure you will not object to it. However, the chairman has intimated that I may speak in general in regard to the provisions of the original bill.

Mr. AMES. It does not provide for cash surrender values.

Mr. MESSENGER. Then it ought to. I do not wish to take up too much time, Mr. Chairman. I have just two more points to refer to.

Mr. ALEXANDER. I would like to ask you one question. Under this code, if adopted, could an insurance company do business in the

District of Columbia that would not allow payment on a policy that had lapsed or that the policy holder wanted to convert into cash?

Mr. MESSENGER. After a certain period, which will be two or three years, dependent upon how this legislation is decided, and dependent upon the legislation in other States—after a certain period all companies must give cash surrender values.

Mr. ALEXANDER. Are there any companies doing business at the present time that do not give surrender values?

Mr. MESSENGER. I think not. I do not see how they could do business; it is such a general requirement.

Mr. ALEXANDER. At the present time are there any companies doing business that do not give surrender values?

Mr. MESSENGER. I think not. Practically all the States require surrender values.

The ACTING CHAIRMAN. How soon do you think a cash surrender value should be required, and what portion of the reserve on an ordinary life policy should it be?

Mr. MESSENGER. At the end of three years. The proportion of the reserve would depend upon the kind of policy. It would be less with the ordinary life and much greater with the high premium endowment form.

The ACTING CHAIRMAN. And it would vary between what proportions? I see four-fifths is given here. Is that too high for a surrender value?

Mr. MESSENGER. As a cash surrender value?

The ACTING CHAIRMAN. What would be the ordinary proportion that you think should be allowed?

Mr. MESSENGER. At the end of which year?

The ACTING CHAIRMAN. Any year you select.

Mr. MESSENGER. At the end of the third year it would run from 50 to 75 per cent.

The ACTING CHAIRMAN. And at the end of ten years?

Mr. MESSENGER. It would go up nearly to the full reserve—close to it.

The ACTING CHAIRMAN. You mean cash surrender value; cash that can be demanded?

Mr. MESSENGER. Yes, sir. The law should require that.

The ACTING CHAIRMAN. I want to know what you think the law should require in the way of a cash surrender value?

Mr. MESSENGER. I am in favor of every policy being entitled to a cash surrender value, but I should make that cash surrender value conservative.

The ACTING CHAIRMAN. That is what I wanted to know, what you regarded as a conservative value?

Mr. MESSENGER. The original bill at least—I do not know whether it has been amended or not—provides to leave all the proceeds of the policy on deposit to accumulate. This is an entirely new feature, a savings-bank feature, and I do not believe that it is desirable to insert anything of the kind in a life insurance policy. The man can have his cash-surrender value or a man can have his paid-up policy, but to require the company to take the proceeds of the policy, however much they may be, and act as a savings bank with the policy holder or the beneficiary having the right to withdraw it at his will seems to me is unwise.

Just a few words now in regard to the requirements of annual reports. All I wish to say is that the requirements are too burdensome. I do not wish to say one word against publicity. I do not wish to say one word against the proper insurance authorities being allowed to exercise all supervision that is necessary in order to make the company conduct its business as it ought to be conducted, but a large percentage of the requirements in the annual reports simply represent a mass of statistics involving great labor and great expense, which will be sent to the commissioner, and if there is legislation like this in the rest of the States all the commissioners throughout the country, and 90 per cent will be laid upon the shelf and never will be looked at. You should require what is absolutely necessary in your annual report, and then if you wish to go any further do it in special cases where it is necessary to make a thorough special examination.

Mr. ALEXANDER. Does this proposed code provide more than what is necessary?

Mr. MESSENGER. I think it does. There will be an immense amount of clerical work that will simply give you a lot of statistics to file away.

The ACTING CHAIRMAN. Have you gone over the suggestion made on pages 8, 9, 10, and 11, etc.; or will you go over them and make suggestions as to what is unnecessary and what may be left in the bill? I do not mean for you to do it while you are on your feet, but the committee would be very glad if you would hand in a brief on that subject.

Mr. MESSENGER. I can not do it on my feet now, but I will be very glad to present something in typewritten form.

The ACTING CHAIRMAN. The subcommittee will welcome it, because that is a matter of detail.

I would like to ask you whether or not you think legislation in the general direction of this bill, so as to provide a model code in the District of Columbia, is advisable at the present time?

Mr. MESSENGER. I will have to give you a qualified answer. I can see two reasons for this legislation, assuming that it is very carefully considered and very properly amended, but neither reason is very strong. The first reason is because I am under the impression—I have not studied it myself, but I am under the impression—that the legislation for the District of Columbia in insurance matters is incomplete; and while it is not absolutely necessary, I am under the impression that it is really desirable that you should have legislation here that is more complete and better systematized. The other reason is that I am inclined to think that if there is no legislation here within a year there will be legislation in some of the States, and in some features that legislation will be too radical and will be unwise; and I have an idea that if there is a wise bill passed here for the District of Columbia the legislation in the other States, where otherwise we would not have as much confidence as we would like, will not be so radical and will be more like what we ought to have. Those are two reasons which I can think of. I do not think they are so very strong, but yet they are reasons.

Mr. STERLING. As I understand it, at the beginning of the year insurance companies do not know what the cost of a policy will be, but

they fix the premium at a certain amount to make the insurance companies safe. At the end of the year how do they estimate what the cost of the policy was?

MR. MESSENGER. It depends a little upon what you mean. The first cost of the policy we know at the beginning of the year. We know in regard to our entire business away ahead for several years upon the assumption of a given amount of business, what the cost will be as far as the losses are concerned, provided the experience goes according to our assumed mortality table; but during a short period the experience will not follow closely the mortality; it will not actually coincide with it at all, but we assume that the claims will go according to the mortality table, and we base our premiums upon that and also an assumed rate of interest and assumed expense rate.

MR. STERLING. You do that at the beginning of the year in fixing the premium in the first instance?

MR. MESSENGER. When we start our business. We do not fix it at the beginning of each year. We have general charges.

MR. STERLING. At the beginning of each year you determine how much "change," as the gentleman said yesterday, is going back to the policy holders. How do you figure that?

MR. MESSENGER. You are referring now to participating insurance?

MR. STERLING. I do not know whether it is participating insurance or not. I presume that applies to a participating policy.

MR. MESSENGER. The company which I represent is doing mainly a nonparticipating business, and in nonparticipating insurance we let the man keep the "change" to start with; we do not take his "change." We are doing a small amount of participating business, and have only been doing it for a few years.

Is that all the committee desires?

THE ACTING CHAIRMAN. That seems to be all.

MR. MESSENGER. I thank you, gentlemen, for your courtesy.

MR. AMES. I would like to present to the committee Mr. Dawson, who is the actuary for the Armstrong committee of New York.

**STATEMENT OF MR. MILES M. DAWSON, CONSULTING ACTUARY
TO THE ARMSTRONG COMMITTEE, NEW YORK, N. Y.**

MR. DAWSON. Mr. Chairman and gentlemen of the committee, this is the first opportunity since I was employed by the Armstrong committee in New York for me to express in public views concerning these matters of legislation. My duty to the committee as its special adviser kept me silent, requiring that I should reserve any opinion that I had to give, for the committee itself. It therefore gives me particularly great pleasure to take to-day out of my time, though it has been very difficult for me to do so, to come here and talk with you.

I may say in introduction that I very fully appreciate the high duties which you are called upon to perform. I fully appreciate that those duties are even of a more serious and important character than the duties which the committee in New York were called upon to perform. You are not simply to pass a bill for the regulation of life insurance in the District of Columbia, or of other kinds of insurance in the District of Columbia. You did do that some years ago. You did it without any noise and without attracting any great public

attention. You passed a bill that was imperfect in a great many regards, but which, under the wise conduct of the department by Superintendent Drake, has worked moderately well, and if you were to-day, under ordinary conditions, engaged in the same sort of thing you would not have had this assemblage of these distinguished men in my profession and distinguished men in life insurance otherwise and representatives of departments throughout the country come here to talk with you to-day.

But by the President's message, as well as by what Congressman Ames desired to accomplish when he introduced the bill, a certain phase of the matter has been especially emphasized, and that is that you are summoned as representatives of the parliament of our nation, a nation to which this matter of insurance legislation the whole world is looking at this moment to perform the exceedingly difficult duty of preparing a model bill; and before I finish I hope to indicate to you, not in a manner to make you feel in the slightest degree discouraged or hopeless, the very great difficulties that confront you in carrying out the trust that has been imposed upon you.

Before I pass to that phase of it, I am going to take up merely those few amendments to the bill which Congressman Ames has introduced here, which would be necessary in order that the bill might not be actually vicious and destructive instead of what was desired. Before passing to that I wish to say that from the very moment that national supervision was mooted in this country, personally I have been in favor of it.

I have had abundant opportunity in my profession and before I adopted the profession of seeing things concerning the supervision of insurance in this country. One of them was that in most of the fifty States and Territories it was a farce; that to all intents and purposes whatever the local companies desired was granted, whether it was a thing that should be granted or not, and evil practices were permitted to grow up. I also observed that even in the best States, in the States where the departments have been comparatively well conducted—such as New York, for instance—such scandals have arisen in the State of New York that no less than three times in the history of that State it has been necessary to take action such as was taken by the Armstrong committee, to investigate the conduct of the department and the conduct of the companies under that department, and twice it has been necessary to impeach before the bar of the senate the man who occupied the position of superintendent. And I think it is only fair to say that if you took the line of men who filled that office and went down the list, at least one-half of them in the conduct of that office would go in among the "goats" instead of among the "sheep." In other words, the result, so far as supervision under State authority is concerned, has not been favorable in most cases.

There is one exception to that, so far as the honesty of the conduct of the office is concerned, one shining exception in the United States—the department of Massachusetts. I am informed that Massachusetts had not the first commissioner, but the first commissioner that ever lifted it to that plane as to efficiency, freedom from political influence and local influence, usually, although not always, which has made the administration of the department, so far as its thoroughness and

efficiency are concerned, a model which you might well follow. And it was because of this and because he came from the State where this was true that Mr. Ames framed originally the legislation which is now before you and is now under consideration. In making that remark I do not wish to be understood to say that the department of Massachusetts has never made any mistakes. It has made mistakes. It has made grievous mistakes and at times very mischievous mistakes, but I do not believe that, aside from the mere occasional swaying by their neighbors, because they were neighbors, the department has ever departed from the strict rules of rectitude as it saw those rules in any case, and I do not know that it is reasonable to expect that any man or any set of men should be so constituted that the wishes and desires of their neighbors, who are honest, well-intending men, conducting honest, well-intending institutions, should not be regarded and sometimes should have greater weight than ought to have been given to them.

There you have State supervision, perhaps, I might say, at its worst and at its best; but that would hardly be fair, because the two cases I have cited to you are possibly the best in this country, New York and Massachusetts. The worst has consisted of "raiders," or fellows who have come out of the West, or out of the East, or out of the North, or out of the South, and, for revenue purposes only, have beset the home offices of insurance companies of all kinds and character and who have even gone to England on European junketing trips and held up the British companies at their own homes, for no purpose in the world but to collect the money for making the examination; and it is these evils that have brought forward first the proposition by President Roosevelt and second when it was seen as a result, largely of the deliberations of your own committee, that those proposals were not feasible under our existing Constitution, brought about the introduction of the Ames bill in the hope that it might solve the difficulties, might bring about reasonable uniformity throughout this country, and above all things might bring about such respect for one department that a multiplicity of examinations and the over-supervision by a confusing number of different departments could be ameliorated, if not done away with.

With that purpose, with that design I find myself in the fullest possible accord. It is not possible for me to speak for the counsel of the Armstrong committee or for the committee itself. I do not know that the question has ever been before them, but from my personal association with them as gentlemen, I am convinced that the sentiment which I have now given they would all subscribe to, and they fully recognize that, notwithstanding, as I shall show you as I go along, a certain amount of antagonism has attempted to be created between your work and theirs, they fully recognize, as I shall proceed to show you, that their legislation was in no sense a model code. How clearly I can show you, I can state in a very few words. Senator Armstrong, as chairman of the committee, confided to me, at Mr. Hughes's request, the drawing of the original suggestion of amendments to the New York laws because of the fact that I was familiar with that legislation generally, and, of course, the first draft might be considered a mere framework for the real task. That work was started about December 15 and finished about January 10, and consisted simply of the amendments that I thought absolutely necessary

and which were along lines and principles that, according to my own view, were such as ought to be covered.

I may say, as has already been stated publicly since the committee has reported, that those original suggestions did not contain a single limitation except the limitation upon the investment of life insurance funds in stocks. Having done this, the committee turned over to me the limitations that they had already determined upon, two of which the committee of actuaries recommend you to adopt. The limitations, the one of them on the contingent reserve, for instance—it means merely that an earnest effort was made in connection with the limitations to so frame them that they would not cripple and ruin the prospects of life insurance companies operating in a proper manner throughout the country. Then, the suggestion was made by Senator Armstrong that we take this work as a basis and make a code, and from January 10 or 12 or 15, in that neighborhood, on until the 1st of February, perhaps for two or three weeks, I was engaged with Senator Armstrong in that work.

I have said all this simply to introduce you to the fact that when the full committee was called together, by advice of Mr. Hughes they adopted as a rule that no matter how good the legislation was they might recommend, if it was not something that was suggested and caused to be considered and to be adopted by the evidence taken by the committee it should not go in the bill. So the Armstrong bills are not in any sense a complete insurance code. They are just what they purport to be, legislation deemed to be wise by the legislature which adopted them, arising out of the investigation of the case and suggested by the evidence taken. The bills that are before you are the result of the evidence taken; and as to the wisdom of their conclusions, which were decidedly not hastily arrived at, I am very sure you will agree if you take the time and trouble to study them thoroughly. In any event, it is certain that the work was done just as well as all the gentlemen engaged in the work could do it, for they worked nights, days, and Sundays for months.

First of all, as to the bill that is before you, from the standpoint that I shall speak upon it, were you not charged with the responsibility of producing a measure which is expected to be a model for legislation throughout this country? You have only a short time at your disposal if the bill is to be reported during the present session, and I can express my regret that this responsibility has been placed upon your shoulders; but it is so, apparently, and we shall have to proceed to discuss it.

First, aside from that responsibility I have only a few suggestions to make. Just a few slight amendments of the bill, if you would prevent it being positively mischievous in any important respect.

Mr. HENRY. Just why did the Armstrong committee refuse to perfect a complete insurance code?

Mr. DAWSON. I thought I had explained that, but I am very glad to restate it. You understand, of course, that the advice of their senior counsel—not senior in age, but in responsibility—was that it was necessary for the committee, in order to do this work, to lay down some principle upon which it would proceed. The Senator and myself had worked for weeks upon the preparation of a complete insurance code, and I will mention a few features which it had in it which do not appear in the bill. The New York law is very imperfect

about the protection of beneficiaries. The present life policies are made payable with the right to change the beneficiary at will. The effect of that is that the policy holder has in his hands what is known as a general power of appointment, and that is held to be absolute property and destroys the protection of his beneficiaries against claims of his creditors. We had framed in the code something covering that.

Not a member of the committee had any objection to it; but, taking into account the resolution under which the committee was appointed to make certain investigations and to recommend changes in the insurance laws of New York, and taking further into account that in all matters that were not covered by the evidence in any way, they would have proceeded purely upon the advice of their counsel, it was recommended by Mr. Hughes, and in the most positive manner, that the principle should be adopted that we should not attempt to produce a perfect insurance code, but merely to cover those things in the code which the testimony taken by the committee required should be amended. That was the principle, and it is right and it should be brought out very clearly, because otherwise you might easily be misled. There are many things that should be in a perfect insurance code that are not in the Armstrong bills.

Mr. HENRY. We have probably thirty days to legislate on this question, and I suspect that few of us understand much about an insurance code. Would not that be rather a short time for this committee to frame and complete an insurance code, when your committee worked for months and months and did not see proper to go into it?

Mr. DAWSON. I will reach that point a little later in my statement, and if you will permit me, I would rather defer the matter until I reach it in the regular order?

Mr. HENRY. Yes, sir; certainly.

Mr. DAWSON. First, as to the amendments which seem to me to be absolutely requisite if your legislation is not to be actually damaging in some regards, and which I hope Mr. Ames will deem proper to take into consideration and cause to be put into your own bill or have changed in this bill. I pass to page 10., lines 16 to 23. I do not know that this is the first one I should have come to, but I will come to it first. This has to do with publicity, and before taking up those particular lines I wish to say that it very greatly gratifies me, as it must all the members of the Armstrong committee and their counsel, that practically the entire actuarial profession and very nearly all the earnest men engaged in life insurance throughout the country, whether as State officials or as officers of companies, have approved the action of the committee with regard to publicity as both right and proper.

In this particular section, section 11, an exceedingly important change has been made from the provisions of the Armstrong bill. That change was made unquestionably largely because the mode of valuation provided in the Armstrong bill was omitted from this bill, the mode of valuing policies, which we will discuss more fully later. The Armstrong bill provided that there should be a gain and loss exhibit in much the language that appears here, but that the receipts on account of the "loading" and "margin," as they call it, according to the select and ultimate method on first year's premiums,

should be set aside and individually stated, and that a certain class of year's expenses should be separately stated likewise.

The ACTING CHAIRMAN. Will you please define the select and ultimate method?

Mr. DAWSON. I will reach that in the regular order. Meanwhile I will say that the purpose of the Armstrong legislation concerning the select and ultimate method of valuation was to provide a minimum standard of solvency, under which any company that qualifies is certain to be solvent. It qualifies by its resources being of the proper quality, etc. This is the proper method of valuing policies. It takes off of the usual reserves charged by the method in use in Massachusetts the present value of the gains because of lower mortality during the first five years of insurance, which are due to getting the new business and paying for the medical examinations. In other words, it practically offsets against the expenses of procuring the business, the very large advantages that the procuring of business brings to the company, namely, that it will have a lower mortality upon those lives than upon other lives of the same ages for a limited period. That is the effect.

I want to say that I am merely speaking of the changes in this bill that ought to be made as a matter of fairness and decency, and in order to prevent its being vicious. Nothing is required in it as it stands, except what is known as the gain and loss exhibit. It pays no attention whatever to the distinction between initial expenses, the initial cost of getting the business on the books, and the taking care of it afterwards.

Under this bill as it stands there will be two kinds of companies doing business in the District of Columbia. One of those will qualify under what we will call the present Massachusetts system, where they charge the same proportionate amount for reserve the first year as they do every other year and treat the business as if they had no more expense the first year than any other year. A large number of the companies will continue undoubtedly on that basis, no matter what kind of laws you pass. Another long list of companies will qualify under the preliminary term provision, which, I am sure, was explained to you yesterday by several people; and under that provision they have purposely made, by the selection of a plan of valuation, no charge against their business at the end of the first year at all, and they thus have made very large and very elaborate provision for the first year's expenses.

Whatever system of valuation you adopt, as a matter of decency and in order that the information which you bring out may be of use in the future to make your bill at some time a model bill, if it is not made one now, you should require each company, operating upon whatever plan it does actually operate upon, to report the loading in first premium and what proportion it used for initial expenses. That means that you should require that in the gain and loss exhibit the facts concerning the gain and loss on the new business of the year should be shown, as well as the facts about the gain and loss on the total business. What I am suggesting to you is the kind of information that the Armstrong committee demanded and called out in its investigation, and which, I know, interested every one of you who has read the papers—to discover that the most economical were using all the way from 35 per cent to 40 per cent beyond all the margins

they had to use, and the worst up to as high as 200 per cent, 300 per cent, 400 per cent, and, in one case, 460 per cent of the margins.

Mr. BIRDSALL. That would be a way of arriving at the actual cost of every policy?

Mr. DAWSON. I think it would help to do so. It would not give, perhaps, the absolute cost, but it would give it approximately. It would show as to preliminary term companies whether the company was living within the abnormally high provision it had made, and I may say to you that the Armstrong committee did not find a single one that was, except a little institution down in Philadelphia, one of the oldest, that is conducted for Presbyterian ministers and gets its business very cheaply—that is, among the preliminary term companies—that was the only one reporting to New York. There are others, perhaps, outside. I may say that the commissioner of Wisconsin called out the same information a year earlier, and he found among all the companies in Wisconsin only two that could qualify in the same manner.

Such a first year gain and loss exhibit, without regard to the select and ultimate method, saying nothing concerning it, has been prepared by me and adopted by the royal commission on life insurance of Canada, which is now investigating all the companies in Canada and under which I am serving. I shall leave a copy of it with you. I do not claim that it is perfect, but it is simple, and it does show by items where the profits and losses are, and I may say to you that the first company we investigated in Canada was found to have sunk two-thirds of its annual profits in the losses on new business, year by year. We also found that if it had not had speculative profits—that is, the marking up of securities or the sale of securities for more than they cost; if they had gone the other way—no surplus would have been available for the policy holders. You understand, of course, that is only an apparent, immediate loss. It is possible, if the company makes money on the same policies as they get older, that they would be able to make good that loss; but the facts should come to light.

Mr. HENRY. Do you offer that as an amendment to this bill?

Mr. DAWSON. I suggest that you insert the words "the loading on premiums for the first year of insurance received in said year and the net saving upon expected mortality losses on policies issued in that calendar year." Those two things, and the loading on the first year's premium of that amount are literally all the money that any kind of a company, except the company operates under the select and ultimate valuation, whether it be preliminary term or not preliminary term, has provided out of the first premium collected to pay the expenses, and according to its own method of valuation, that company is taking all the additional money out of the profits, and in Canada if the company was operating an annual dividend basis it could not carry on its business and pay for new business, as it is paying, because it would not be able to pay annual dividends, in point of fact, for about seven years after it issued the policy. It is information of this character that you ought to get.

I will pass over to the valuation section, on page 16, and as to that I have two suggestions to make, possibly more, two suggestions as to the first sentence on page 16. First of all, you will observe that the provision is made that if a company is changed from an assessment

company to a regular company its assessment policy shall be valued as one-year term insurance—that is to say, every year it shall be treated as merely an insurance for that year, although assessment policies are not written as one-year term insurance. One-year contracts are written with regularly increasing premiums. An assessment policy calls almost necessarily for what purports to be a level assessment. They ought not to be permitted to qualify as regular companies, so long as they do not revise their plans and readjust the policies they already have outstanding, which it is within their power to do, and get them on a sound basis. I say that deliberately as a result of a rather long practice as consulting actuary, and it is a change of position.

There was a time, some years ago, when I thought the other way, and I say that to you for this reason: An assessment company that changes over to a regular company without readjusting its assessment business, both menaces the safety and soundness of the old line business it is putting on its books, and in addition to that it is a grievous injustice to the policy holders. I think I can make it perfectly clear to every one. This alleged one-year-term contract, as it proved in some of the New York companies, permits them to run on without increasing the assessment on a man until he gets to be 70 years of age and then it jumps to the high rate at that age, and is on an increasing basis which absolutely becomes prohibitory in a very few years. Now, had that company been compelled to readjust its policies before it could qualify as a regular company it would have had to go to the policy holders and explain the facts and bring about a change of the policies to such forms that men could afford to carry them, and there would have been no such hardships created as will run on for years in the history of that institution.

In addition, we have in the State of New York another assessment company which, before it adjusted as a regular company, had only made some small experimental readjustments and made use of the one-year-term valuation privilege to become a regular company; and, while not mentioning the name of the company, it was brought out clearly in the proceedings of the committee and every person here will easily recognize the company, it is notorious throughout the country for its bad payments, it has been preserved merely by the tremendous intellectual force of one man, its vice-president, and in point of fact it should have been buried long ago, perhaps, and all of that could have been prevented if the laws of New York had at that time required the company to put all its business on a sound basis when it readjusted, when it became a regular company. You will find in section 52 of the Armstrong bill—that is, for the new laws of New York—that the members are permitted to change an assessment company to a regular company, but only on condition that it is a complete change. This is the language of the statute in that regard:

But no life insurance corporation shall hereafter be permitted to avail itself of the provisions of this section unless it shall hold for all its outstanding policies or certificates assets equal in value to the minimum reserve required by section 84 of the insurance laws.

The minimum reserve is something that I am going to explain later. I am suggesting this now merely to prevent this bill being a vicious measure. The words "shall be valued as one-year term for the first

year of insurance" should be put in the bill. Otherwise you will find some companies trying to value it for two or three years.

Mr. AMES. That amendment you will find on page 16, lines 4 and 5, and on page 2 of the notes.

Mr. DAWSON. Yes, sir.

Now, I am going to talk about one thing that you need for a model code at this point, and which I think should be brought to your attention. Lines 12 to 18, on page 16, provide for the value of risks other than life. This paragraph provides for the charge of 50 per cent of the full annual premiums as the reserve against all classes of insurance except life. I have a few words to say in regard to fire insurance. Fire insurance companies use for expenses and profits on the average about 40 per cent of their premiums, and 60 per cent is about what is required to pay losses. I think 60 per cent is a little high, if anything. That is true in this country and in other countries. This all means that when the risks, on the average, have run halfway, only 30 per cent—one-half of 60, not one-half of 100—is needed to meet their ordinary risks; and practically in all countries in the world, except Canada and the United States, that, or something like that, is what they do; that is, they require the company to carry 30 or not more than 40 per cent reserve instead of one-half of 100—that is, 50 per cent.

I think it may have been a puzzle to most of you to understand how it happened that when the Chicago fire broke out that our companies all over the United States went down and the British companies came up smiling and paid their claims. They sent a lot of money over from Great Britain and earned the good will of the Americans, and for years past practically the British companies have had the call on our business. It was not that the British people were any more willing to give up money than the Americans. It was not because they were any better insurance men. It was this reserve law that made it possible for the British companies to pay. They drew their reserves down to 30 per cent, if necessary, and if they needed to put up a little money they did so. That is what saved the British companies, and that is what carried down the great companies of this country. We are faced to-day with a disaster compared to which the Chicago fire was absolutely nothing.

The ACTING CHAIRMAN. What was it that saved them?

Mr. DAWSON. The fact that they were only required to hold 30 per cent reserve at home instead of 50 per cent. We are confronted with a similar situation in this country. I think there is scarcely a fire company in the United States of any importance and doing an active business in San Francisco that knows where it stands and knows whether or not it will be solvent when it settles its San Francisco losses. Some of the largest companies are trembling. One of the Hartford companies had to call on its shareholders for nearly \$4,000,000 to meet the claims—additional capital and surplus.

Mr. ALEXANDER. You mean the claims in San Francisco?

Mr. DAWSON. Yes, sir.

Mr. ALEXANDER. That has already been done?

Mr. DAWSON. Yes, sir. I call your attention to this because you are talking of making a model bill. I want to say to you that there are two kinds of reserves in fire insurance that should be taken into consideration. There is the ordinary reserve that meets the

usual claims—the usual running claims that average about the same year after year—and there is the extraordinary reserve that ought to be accumulated against the conflagration hazard, and when it has been accumulated against the hazard, then, when the actual conflagration loss comes, it should be permitted to be pulled down and be used to pay the claims and then gradually be accumulated again. That is common sense. You know the way they are raising the rates, not because the hazard has increased, but to restore the surplus, which is the only means of creating a conflagration reserve. They are getting you and your neighbors and your friends to pay the higher rates of premiums in order to maintain this 50 per cent reserve and in addition to accumulate a conflagration fund.

Mr. DE ARMOND. Is there not this further and additional reason, that if the people take out insurance now they will pay a part of the loss?

Mr. DAWSON. Yes, sir. Now, let me state further, for I have not given you any idea about this section. I suggest that if a model code is to be drawn at this time you should provide that fire insurance companies should carry a reserve of 50 per cent of the gross premiums, just as you have, and you should provide as to new companies that they should have this reserve in five years, the first year to carry 30 per cent reserve, and in five years to bring it up to 50 per cent by equal gradation. You should further provide that the extra 20 per cent over the necessary 30 per cent should be a conflagration reserve, and whenever conflagration losses were met they should be permitted to draw on that reserve. That would allow a company to pay those losses, and then it could start again on the reaccumulation of the money during the next five years. By doing that, gentlemen, you do not do anything that impairs the strength of these institutions; you increase the strength, because you have this extra reserve accumulated for conflagration purposes only, and that will enable the companies to pay the conflagration losses. I respectfully urge that suggestion upon your consideration.

The ACTING CHAIRMAN. Who will determine whether they are conflagration losses or regular losses?

Mr. DAWSON. It could be easily arranged, and could be defined in the bill. You could make a territory, saying that so many blocks should constitute a conflagration, and put that in the bill. Those are mere matters of detail on which I do not feel that I can offer any great amount of information.

The ACTING CHAIRMAN. Are there any laws which limit the insurance risks within a certain territory?

Mr. DAWSON. No, sir. There are not only no laws, but there are no rules by which a company can guide itself ordinarily. The creation of this conflagration reserve in the form I am suggesting to you would be an advantage to the company, because it would be known whether any district that might be stricken with a conflagration would be covered by this conflagration reserve.

The ACTING CHAIRMAN. Might it be provided by law that no more risks should be carried in any one town than are already covered by the conflagration reserve?

Mr. DAWSON. Yes, sir.

The ACTING CHAIRMAN. Would that hamper the business of the company?

Mr. DAWSON. I think, as to the old companies, it would, but I am under the impression personally that it would be a good thing.

The ACTING CHAIRMAN. You think they could recover so as to help themselves out?

Mr. DAWSON. Unquestionably; and it would open the field for new companies. If you pass this model code as to this form of valuation, you will open the door for the first time in the United States to the free organization of new fire insurance companies. I have no doubt it is a matter of wonder why the amount of fire insurance capital that is available is limited. The reason is that the companies have this 50 per cent to meet. A company starts and it has to pay out of its funds for agency and other expenses 40 per cent, leaving 60 per cent, and after its risks have been in force six months it has still to stand 50 per cent for reserve, so you see you have made it very difficult to establish a new company.

There is one important matter that I want to speak about. To-day the Continental, one of the great fire companies, is circularizing agents throughout the United States urging them to place their business in the Continental, because it is such a strong company and will come out very strong. The effect of that will be, perhaps, to mass enormous risks with the stronger companies, and that will be very bad in itself, for two reasons. First, it will give them almost a practical monopoly of the risks in the congested districts and enable them to charge any premiums they choose, and in the second place, when a conflagration comes next time down may go your strongest companies on account of the massing of their risks. There are various reasons why limitations should be had, but I am not very much of a friend of limitations.

Section 51, on page 45 of the bill, prohibits discrimination. This section also, gentlemen, is very nearly a copy of the New York law, but there is one very important omission from the provisions of the New York law. The Armstrong bill, which is now the New York law, in addition to what is contained in this bill, also contains the prohibition of a particular kind of discrimination, which I think is unlawful, but which, unfortunately, the insurance commissioners have not deemed unlawful and consequently have not attempted to enforce the law against it. In section 89 of the New York law you will notice the following words underscored:

No premium upon any policy of life insurance issued on or after January 1, 1907, shall be charged for term insurance for one year higher in amount than the premium for term insurance for one year at the same age under any other form of policy issued by such corporation.

Please bear in mind that in what I am about to say on this subject, as in all I have said, with the exception of the fire insurance matter, I have been merely talking of the amendments which I think are absolutely necessary to prevent your bill from being vicious. I am informed since I arrived that the actuaries who addressed you yesterday, said that while they did not favor preliminary term valuation they were disposed to favor it in a modified form—what is known as the modified preliminary term or the original Sprague plan. That plan is that the company should have one preliminary term rate for all persons of the same age, and that if it collects any more money than that from a man the first year, the money should go into reserve and should not be treated as available for expenses.

Now, let me illustrate this thing to you, and in doing it I want to give you a little history. "Preliminary term insurance" means that the company has by its contract agreed with the policy holder that the policy shall be treated as if it were two policies, one of which is for one year's insurance and the other beginning at the end of the first year, if the policy holder chooses to go on, as a life policy and to be a life policy with level payments from that date or to mature at the end of a certain number of years from that time, but that in each case the first year shall be "term insurance."

Now, I want to give you the effect of that. That is, as it is usually carried out and as it can be and will be carried out if you pass this bill as it stands; and don't forget that you will be saying that that is a model law. They sell one man a one-year term policy. We will take a man 20 years old, now, just as an illustration. They sell that man of 20 a one-year term policy, followed by a life policy, and they will charge him \$18.60 for his one year's insurance, which is exactly what they will charge him for a whole life level-premium insurance, beginning on the following year. Then they take his neighbor, who wants a twenty-payment policy, and who is the same age—20 years—and they charge him \$29 for one year's insurance, because he may renew that as a nineteen-payment life policy the next year at the same rate and get his policy paid up in twenty years. Then they take another man at the age of 20 again, who wants to get his money at the end of twenty years, and they charge him \$50 for his policy under the one-year term provision, and take all of it for expenses except what they have to pay claims, because they are going to give him a nineteen-year endowment the next year at the rate of \$50 per annum. Then they get another boy, who wants his money at 30 years of age—you know some of us do want to see our money once in a while—and they sell him a policy which they call a ten-year endowment policy, and they take \$100 for one year's insurance from that fellow, because they are going to charge him \$100 for nine years for the nine-year endowment, beginning the next year.

Now, look at it: You have four men, all the same age, all buying a policy for just one year, according to the theory of that contract, and you have got those four men paying all the way from \$18.60 up to \$29 and \$50 and even \$100 a year. That is not all. They started out in the State of Iowa—and there is nothing in your law to prevent it being started in the District of Columbia—with the following plan: They started a scheme to sell what they called bonds, which came to be most disgracefully known afterwards as "Iowa bonds," and the State of Iowa never suffered under a more opprobrious epithet than when its name was associated with those bonds. Under some of them they sold a policy where they sold \$120 insurance the first year, and they charged \$100 for that. Now, I just want you to see the infamous sort of thing that has crept in as the result of the preliminary term plan, and that, unless you put in this Armstrong law provision in your law here, it will be perfectly possible in the District.

Mr. ALEXANDER. Would you do away with the preliminary term?

Mr. DAWSON. Now, I am glad to have the question asked. I stand here before you perhaps almost more responsible for the preliminary term in the United States than any other member of my profession in the United States, or perhaps than any other man. The first regular

company to adopt the plan and continue to use it and live under it, I think, adopted it at my recommendation only twelve years ago. It adopted it because the then existing reserve conditions where the company was not allowed any more for expenses the first year than any other year—although the expenses are estimated to be from seven to ten times as much, necessarily—absolutely shut out the possibility of establishing new companies in this country.

I am not ashamed of having had a part in the introduction of that plan. There have been built up under it, perhaps, 50 companies in this country that have splendid chances to live, and that ought to live, and will live, and they would not have been built up at all if it had not been for that plan. But the plan had hardly been accepted by the institution that I speak of—which is, by the way, an Iowa company, also—before a very clever and very disreputable agent of one of the New York companies instantly thought of the idea that he could make a sort of a building-and-loan scheme out of it and get the credit of the strength of an insurance company by using that preliminary term in the bond fashion that I have explained. And he established the bond plan, and it was brought to my attention within a year after I introduced the preliminary term. The then governor of Iowa, Mr. Jackson, was president of the company I was serving. They were considering reinsuring the life risks of the company that used the plan. I analyzed it for them and explained how disgraceful it would necessarily be, and they refused to touch it. I may say that when I introduced preliminary term insurance I thought it was practically original with me. I may say also to you that the modified term plan approved by the committee of actuaries calls for this section, because it prohibits the company from charging more than one kind of a one-year-term premium.

Mr. ALEXANDER. You got that from the New York law?

Mr. DAWSON. That is from the New York law—from the Armstrong bill. As I say, I introduced the modified term plan for this country, and my clients are the only companies, with one exception, that have ever tried it, so that it is a sort of indorsement, as compared with the plans of other companies. One company right here in the city of Washington, to their credit be it said—the Masonic Mutual—after consultation with the actuary who was acting for it, adopted the modified preliminary term plan.

As I say, I thought that I was the inventor of the preliminary term, but I found out that the preliminary term was invented the year that I was born, and I found out also that it had spread all over continental Europe, and later I found that the highest authorities for it in Europe were the two greatest authorities in all Europe—Zilmer, in Germany, and Sprague, in Great Britain—and that these men were recognized as the heads of their profession; and later I discovered that they said that this plan is virtuous and proper and decent if it is applied to ordinary life policies only and if all the additional money paid in is put into reserve. That is exactly the modified preliminary term plan—that the company may treat as a term premium only such part of its premium, other than ordinary life, as are equal to the ordinary life premium, and that it must put up a reserve out of the additional premium.

Now, let us see how logical and reasonable that is. If I sell you just a life policy, and it is only going to be paid after you die, you do not trouble your head about the internal arrangements of the com-

pany and about the company's allocation of its expenses. You know that its expenses are going to be more the first year, of course. But when I invite you to buy a limited-payment life policy of my company, I ask you to do two things. I ask you to buy life insurance, and then I ask you to give me some more money to be invested and taken care of and used to pay your premiums after the ten or fifteen or twenty years is over. Is there any way in the world in which you can justify taking that money to pay expenses which that man has been invited to invest there as a commutation of premiums which would not be due until after ten, fifteen, or twenty years?

Mr. ALEXANDER. That is what led to much of this trouble.

Mr. DAWSON. That led to the improvement that I speak of. Now, take an endowment policy, and see how much worse that is. When you are invited to buy that, you are invited to buy life insurance, and then you are invited to give the company a lot more money for no purpose in the world except to cause the policy to mature at its full face value in ten, fifteen, or twenty years; pure investment. How could this Congress, how could our President, go before the people of the United States and say that a valuation scheme put into your law which would permit a company to take all the investment money paid in there the first year for expense purposes was any part of a model code or was anything but indecent and vicious? Now, this is all in confirmation of what the committee of actuaries has said.

Mr. ALEXANDER. What have they got in this bill before us touching that purpose?

Mr. DAWSON. The valuation section is on page 16. At the end of the first sentence on page 16 it reads:

All policies purporting to be preliminary-term policies shall be valued as one-year term policies.

And the actuaries' committee has recommended, and I do also, the additional words "for the first year of insurance."

Mr. AMES. That is the amendment they have before them.

Mr. DAWSON. It is not the valuation section, but the discrimination section, section 51, where I recommend you to follow the language of the Armstrong committee, which will prevent the company from taking that first year's premium. Now, with those words I have completed entirely my statement. I think that provision will go at the very end of your section all right. You have got much the same thing there, at the end of section 51, "any valuable consideration or inducement not specified in the policy contract of insurance."

Now, I may say in that connection that personally I have never had the slightest doubt that even the section, as your bill stands, if the commissioners would ask the courts to construe it, would be construed by them to prohibit such discrimination as I have been describing; but in getting up a model code, when you remember that every commissioner in the United States has construed it the other way and the courts have never had a chance to construe it at all, it seems to me it is very plain that it is your duty and your privilege to shut out such abuses.

Mr. O'BRIEN. I want to know if with that amendment to the discrimination section you consider that the preliminary term in modified form is satisfactory?

Mr. DAWSON. The preliminary term in that form is, in my judgment, a moderate, reasonable allowance, gives a reasonable, moderate allowance for the first year's expenses, under which I know the companies can live and get good business, and which is certainly a great improvement over the other.

Mr. O'BRIEN. That brings you back to your original idea of allowing the companies reasonable expenses?

Mr. DAWSON. Yes. Now, I have absolutely concluded everything that I have to say concerning your legislation from the standpoint of its being made merely not a vicious measure. I have nothing further to say on that point.

Mr. BIRDSALL. Do you not think the exclusion of any person who may be interested in insurance companies may be vicious?

Mr. DAWSON. Interested in what?

Mr. BIRDSALL. In other words, this section 5 provides:

No person shall be appointed who has any official connection with an insurance company.

That may be all right, but it goes on:

or owns any stock in such company or is interested in the business thereof, except as a policy holder.

Now, the objection was made yesterday that that would probably exclude any person competent to handle the business from taking the office.

Mr. DAWSON. I think that is almost the exact language of the New York law. Here is the language there:

Neither the superintendent nor any deputy nor employee shall be directly or indirectly interested in any insurance corporation except as an ordinary policy holder.

I have not heard of there being any such question, and I do not think there will be.

I am passing now into a question of professional ethics, and I hope that my brothers in the room will forgive me for doing so, but I have personally long taken the ground that grave abuses have arisen from permitting men of my profession to be employed by the Department when they were also employed by the companies, and particularly when they were employed to examine companies that they were themselves consulting actuaries for. I have twice been asked to do that by commissioners of very high standing and of personally high moral views, and have been almost abused because I would not examine my own clients. Now, that can not happen under this law. It never has happened since this law was passed in New York.

(At 12.20 o'clock p. m. the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee reconvened, pursuant to the taking of the recess, Hon. Richard Wayne Parker (acting chairman) in the chair.

STATEMENT OF MR. MILES M. DAWSON—Continued.

Mr. DAWSON. Before the recess, Mr. Chairman, I had reached the point of discussing a model bill. I would like to say here that the fire insurance situation calls for action, and I recommend you, for

one, to amend the District of Columbia laws regarding fire insurance reserve.

Now, I am coming to the question of the model insurance law, and for the information of the committee, and before proceeding to discuss it, I wish to call your attention to some language from a document which I think you can not very properly decline to take official notice of. It is sent out by Charles W. Scovel, the president of the National Association of Life Underwriters, which is an association of the associations of life insurance agents through the country. In that, after saying some other things about the Armstrong bill, he says this:

We all recognize gladly the valuable service rendered, as investigators, by the Armstrong committee and its able counsel; but no thoughtful mind can fail to see that, as legislators, their work was done under such conditions of excitement and haste as to make difficult, if not impossible, the solution of vast, complex problems, in any permanent shape.

Farther in this, after speaking of the general situation and the different instrumentalities which have brought about the introduction of the bill which is now before you, they say: "This looks more like due deliberation." And they go on to give you praise, to give the different parties connected with the Ames bill praise, which I am sure will make the gentlemen blush, because they realize that it is not deserved. The Armstrong committee was in session four months in its investigation. They were in session pretty constantly for three months in the work of framing the bill as it finally went into the legislature. After it had gone into the legislature finally, as the result of all sorts of conferences and the consideration of all kinds of suggestions brought from every quarter, after more than three months spent in constant and almost intolerable toil, day, night, and Sundays, on the part of the committee, its counsel, and its actuary, they brought a bill into the legislature and it was thrashed out for several weeks before it was passed, and in point of fact probably no insurance legislation in the United States has ever received more careful, persistent attention in its making, and on that account I am satisfied that most of you will not be satisfied that the result which you have before you in the perfect form that has been under discussion is the work of due deliberation; but the work of the Armstrong committee was hasty.

I call that to your attention, however, not because of the language I read, but because what is being here proposed is already being set up by the writer of this letter as a method of destroying the Armstrong legislation in New York; and you have that situation to deal with, that while you have the duty imposed upon you in a very unusual manner by the President as well as by the action of the gentleman who introduced the bill, of producing a model bill, you have the peculiar condition imposed upon you also that you are going to have the strongest possible influences brought to bear from all parts of this country on the part of companies and individuals who do not want the right thing done, to get you to destroy the work of that committee, and I feel it absolutely my duty to call that fact to your attention. The movement is going to be widespread through the country. It amounts to a conspiracy, a conspiracy which I intend to open up to you as I go along.

Now, regarding the model legislation: I am not at all sure that we

can have model legislation anyway, but it is certainly worth the trial. If you do undertake it, however, then it is not a mere question of amending the bill that is before you so as to get rid of the things that, if they are not touched and corrected, will be vicious in that measure, but it is to bring it up to the highest level of existing legislation and also to the highest level of proposed legislation. The Armstrong measures do not purport to be a model insurance code, not because they were not believed by the committee which created them to be good laws, but because there were many things which should be in a model insurance code which were not put into those bills. The question was asked—and I dodged it at the time—whether, in my judgment, the committee could report such a model bill at this session of Congress—by “session” I mean merely before the vacation—with a chance of the same being carried. I have no hesitation in saying that if the legislation proposed by the Armstrong committee was hasty legislation, it must be manifest that the Judiciary Committee of the House of Representatives, while I realize that you are all much more experienced legislators, would certainly have its hands very full to turn out a bill which not only embraced the special things in the Armstrong bill, but should also embrace all the things that should be in a model code of insurance, in the short time before the adjournment—say, about two weeks.

Mr. ALEXANDER. Then, if I understand you, this Ames bill does not come anywhere near your idea of a model bill?

Mr. DAWSON. It certainly is far short of it.

The ACTING CHAIRMAN. I understand you are going to come to the point about what you want to have in and what you want to have out?

Mr. DAWSON. Yes.

The ACTING CHAIRMAN. We would be very glad to have you do that at once, because this general discussion as to what other people are doing and as to whether there is a conspiracy could be carried on for a great while. It is not to the point. We would like to have you come to the point as to what you want in the bill and what out and why.

Mr. DAWSON. Of course I have to submit to your ruling, but—

The ACTING CHAIRMAN. I am not making any ruling. I am only submitting it to you.

Mr. DAWSON. Yes; that is all right; I was answering a question which was asked me. It is essential to the model bill, and it is proper that this committee should have this called to its attention if it has not had its attention called to it before, that the way this is being construed throughout the United States is that it is meant to institute a comparison with other legislation to the disadvantage of the other legislation.

The ACTING CHAIRMAN. We are not instituting any comparison.

Mr. DAWSON. But it is being instituted.

The ACTING CHAIRMAN. We are very humble about what we do, I am sure, and we are instituting no comparisons.

Mr. DE ARMOND. I think this is important enough to get information on. If it is a fact that any persons or interests are endeavoring to use this committee and this Congress for the purpose of breaking down what is good and wholesome legislation in New York we certainly ought to know it.

Mr. DAWSON. The document does not belong to me, but with the consent of the gentleman who has it I was going to present it to the committee. But I will drop it.

The ACTING CHAIRMAN. If Mr. De Armond wants to go ahead, why, go ahead. I am not the committee, and I am quite ready to go ahead with anything that the committee wants.

Mr. DAWSON. I do not want to antagonize the views of any of the committee in my remarks this afternoon, and I hope that you will believe that I realize that I am trenching very heavily on your time.

Now, as to the model legislation, it certainly puts upon this committee the duty of going much further than would be merely necessary to cure vicious things in the bill as it stands, which is all that I have talked of up to the present time. I have no hesitation in saying that, even if you make the corrections which have been suggested and have been recommended by others, so that your preliminary term valuation provision is not vicious, you have still fallen far short of what you should do about the matter of valuation, and I will confine my further remarks concerning this subject to that. I will do it, not for the reason that there are not many other subjects that I ought to suggest to you, but that I can not accept the chairman's suggestion to cover all these matters, because it would take far more time than you could possibly have at your disposal for me.

Mr. AMES. Will you pardon an interruption just here, before we get too far away from the subject? If this committee would pass a perfect code, and it would pass Congress at this session, would not that code, if adopted by the several States, interfere with the operation of your Armstrong report? Is that the proposition you are making to the committee?

Mr. DAWSON. Not at all. In the first place, I do not believe it conceivable that there should be such a thing as a perfect code, and if there were a perfect code adopted in this committee I have very little fear that it would interfere with the Armstrong committee in any particular.

Mr. AMES. You said that there was a conspiracy, and I supposed that you might consider that I was one of the arch conspirators.

Mr. DAWSON. No, sir; I said you were not. The conspirators are the people who are managing the National Life Underwriters' Association of the United States, and the reason for their conspiracy I intend to open. Gentlemen, a great many evils were exposed by the Armstrong committee, but the most serious evil in life insurance in the United States for at least twenty years has been the agency commissions in the business. The agency commissions of the life insurance business during the last twenty years, during all of which I have been engaged in the business, and during the first ten years of which I was an agent, and part of the time superintendent of other agents for one of the largest companies in the country, the agency conditions as a whole have been a scandal and a disgrace, and particularly in the matter of compensation.

Now, I may appear to ramble, but I am not rambling when I give you my experience running back for ten years, when I was appointed superintendent for the New York Life for the State of Illinois. Everyone knows that the difference for the worse between the conditions then and what they have become since is immeasurable, but

even then I had a man report a business to that office in ninety days of over \$600,000 of alleged business written, which he paid for by drawing on the company, and every dollar of the premiums went into his pockets, or into the pockets of some one working with him, and there was a certainty that the best and the greater part of that insurance would lapse at the end of the year, because the company was going to ask for full premiums. These are the conditions, and they are not merely a national scandal, but they are an international scandal, and they are the principal reason why American life insurance stands throughout the world as it does to-day.

Now, these conditions grew up under that strict valuation system, which I was explaining to you, when they did not allow preliminary term. They grew up because there was not any standard by which the managers of the company could determine what was a proper commission and what was the proper cost of new business. The reason of that was this: Here was your premium with, say, 25 per cent loading, which is the same the first year as the last year. The business manager looks at it and he says, "I can only use 25 per cent for expenses?" The actuary says, "Yes; I guess that is right; you will have to put up the reserve, and pay losses, and all that." But the business manager, being a hardheaded man, knew that he could not get the business on the most economical basis under any such expenditure.

Experience has shown that to be true. The most economical expenditure for agents' commissions will not allow you to bring it that low. There are two companies represented here, the representatives of both of which have spoken on that line, and their most economical rate of expenditure is 40 or 45 per cent, instead of 25 per cent for the commissions alone, and there is no doubt, perhaps, that that is about as low as it can be to enable the men to make a decent living and to support their families properly by giving their whole time and attention to the life insurance business. And as a result of there being nothing in the nature of a business basis in the premiums and in the reserve charged and the different things that had to be done with premiums to guide a company—in consequence of that a practice soon grew up of paying not 40 per cent, but 50 per cent, 60, 70, 80, 90, 100 per cent, and more than 100.

Mr. GILLETT. What do you think would be about a fair percentage to pay on legitimate business?

Mr. DAWSON. I am going to get to that in a moment, and I would like to answer it in my own way because it is part of what I am going to give to the committee.

Mr. GILLETT. The business must be secured in some way.

Mr. DAWSON. I believe that I will begin to answer that question right now, by explaining the so-called select and ultimate method of valuation. Now, what does the company get when it gets a thousand new lives? Wherein is it benefited above having a thousand old lives? Simply by the fact that these men have been freshly examined, and for a few years they will not die so rapidly as men of the same age who have been five or six or ten years insured. There is a further advantage in that the expense to the company will be spread over a larger number. That advantage is not worth very much after a company reaches a certain size, because you will find

that the rate of expenditure of the two companies that I spoke of, both of them moderate sized companies, is lower than that of the biggest companies in the country. That leads to the conclusion that the size does not always make a lower rate of expenditure.

What is the consequence of all that sort of thing? That that company can not afford to expend more to get that sort of business than, first, the loading on its first year's premiums, and second, the present value, on a conservative basis, of what it will gain by the fact that the persons insured do not die as rapidly as those who have been insured longer. If it does more than that, it pays out something that has got to come out of the dividends of the policy holders of the company; and I do not suppose there is a man within the sound of my voice who has not had the experience of those rapidly diminishing dividends, which have been very largely due to the desire to do new business at any cost.

Now, the select and ultimate method has a very direct connection, therefore, with what is proper and decent in the matter of the cost of new business. It has not been until very recently accepted as a guide by any company, but the modified preliminary term plan, so called, gives almost the same provision, and clients of mine that have employed that plan have in some cases, even in these wildly competitive times, got on within the provision safely and with good margins, and one of those companies is represented here to-day by its vice-president.

Mr. AMES. Will you tell me when some company first adopted this method?

Mr. DAWSON. Which one do you mean?

Mr. AMES. You said that it was only recently adopted.

Mr. DAWSON. The select and ultimate?

Mr. AMES. Yes.

Mr. DAWSON. The select and ultimate is now regarded as the guide for all companies in the State of New York by law.

Mr. AMES. Yes; but when was it first adopted by anybody?

Mr. DAWSON. It was adopted by some of my clients as soon as it came into existence, as the limit of what they could pay.

Mr. AMES. How long ago?

Mr. DAWSON. The method was only devised about four years ago, so that it can not have been very widely adopted.

Mr. AMES. Since, what companies have adopted it?

Mr. DAWSON. I think Mr. Baldwin can tell you about that.

Mr. BALDWIN. It was adopted by us January 1, 1903.

Mr. DAWSON. Now, to proceed. The New York committee had these two different methods before them. They had them fairly and frankly, mainly as the result of testimony given and not as the result of the advice of their consulting actuary, and I cared very little which one they adopted. It was of no special importance.

Mr. AMES. I would like to interrupt again, if I may.

Mr. DAWSON. Yes.

Mr. AMES. In drafting a new code, a model code, would you deem it advisable to take any method that was adopted by, say, one or two or three companies out of the 500 or 600—perhaps not as many as that—but adopted and used by so small a minority of the companies as a standard for a model code?

Mr. DAWSON. I am glad to have the question asked, because it brings up a view concerning a model code that I would like to say a few words about. If your model code is to be a real model code it will be probably what no company in the United States wants. If it is to be simply what the majority of the companies want it will be what the life underwriters' committee is asking for. It will be something to be avoided instead of adopted. Now, concerning this matter, is it not true, let me ask you, is it not absolutely true that valuation ought to be divorced from what companies want, and be what is good for the policy holder and for the community at large? Is not that a fact?

Mr. AMES. I think that is a fact; but in practice we can not always have that.

Mr. DAWSON. Not always. I quite agree with you on that. Now, let us take the condition. Here is a straight, scientific formula which can not, after it has once been initiated and put into law, be deviated from. It means a perfectly definite thing, namely, that the policies of insurance issued by a company—and this is a definition of the select and ultimate method from the standpoint of valuation—shall be valued, not as if the men were going to die immediately after they are insured, at a mortality rate at which they do not die until they have been insured five or ten years, but that they are going to die about as the actual mortality rates run, and that a reserve is going to be set up to meet the actual liabilities according to the actual mortality experience. Now, if they did not have any first year's expenses than in other years, it would still be a virtuous and proper method of valuing life-insurance policies, but the other method involves a reserve which they can not have collected and which they will not need, together with the premiums they are to collect, to carry out their obligations. So that, taking it from the standpoint of what the reserve is for, which is to enable them to carry out their policy obligation, or from the standpoint of how it is accumulated, you have still got the same thing called for.

Mr. AMES. Are there any other methods by which new companies might be organized—other methods of valuation which would accomplish the same purpose?

Mr. DAWSON. There are no other methods than preliminary term and this to-day which have a fair claim to be considered. The first is based on the mere construction of the contract—on writing the contract so that by legal intendment it is exactly equivalent to another thing. It is at best a successful evasion of the existing statutes of the country. Of course you, by your bill, do not make it an evasion, because you authorize it, but it is based, notwithstanding, upon a purely artificial distinction. The select and ultimate system is based upon a hard fact, which is the fact that men do not die at first as fast as they do later.

Mr. AMES. Is not that fact, as a matter of fact, the reason that your mortality table is not higher?

Mr. DAWSON. Only on the first five years of insurance.

Mr. AMES. Your table is higher than it should be, so that the table is incorrect.

Mr. DAWSON. The American experience table is incorrect as applied to the first five years. We corrected that in New York by changing the rates for the first five years' insurance. A table that is concede-

to be approximately correct, that is exactly what the select and ultimate is. Now, you will find that it is immensely harder to understand the preliminary terms, and especially the modified preliminary term, that select and ultimate appeals to the reason of a man more, that it is not anything but simply the correction of a mistake in valuation. It is simply saying, "We will not cause a company to be charged with a liability that it does not owe, namely, on the basis that deaths will happen in a certain way, when the fact is that they do not happen that way." That is all the select and ultimate is. That is exactly why the Armstrong committee preferred it to the other, and they preferred it without any reference to the personal preference of the actuary who was doing it, because I may tell you that the actuary who stands before you did not care a snap of his fingers, on personal grounds, which they adopted.

I want to say to you that if you want to adopt a model insurance code I have no hesitation in saying that you ought to frame it with utter disregard of the preferences of institutions or individuals. Of course the preliminary-term companies will not want it. They will not want the modified preliminary term, either. The other companies are not going to care anything about it either. They will put up a higher reserve. Of course the law never keeps a company from doing that. So they will not bother about it either. It is not going to be a pleasant thing to do, but, it seems to me, it is a duty, and I do believe you will be able to make the people of the country see that it is just and fair; and I honestly believe that if you leave the preliminary-term provision in your law, even in a modified form—it is so difficult to understand; it seems to the ordinary man so deceptive in its nature—that you will involve your committee and Congress in scandal before you are through with it.

Mr. AMES. Will you allow me to interrupt again?

Mr. DAWSON. Certainly. I am here to bring out anything that I can.

Mr. AMES. The bill as first drafted incorporated the Massachusetts law, which was opposed to the preliminary term, but the convention of commissioners in Chicago decided without exception that it would prohibit the formation of new companies throughout the West if we adopted the select and ultimate, and therefore they recommended and insisted upon the recommendation as it appears in the bill, of the preliminary term insurance, and that is the reason of its being in this draft.

Mr. DAWSON. The select and ultimate had very little chance at Chicago, owing to the fact that no one who had adopted it or who had taken the pains to go into it even as far, I may say, as I have done with you here to-day was present. My duties with the Armstrong committee prevented me from being there. And I candidly do not think that that verdict at Chicago is a permanent decision. However, if the views of those gentlemen, the Massachusetts views, reflected absolutely the views of the five companies in that State, it should have no place here on account of reflecting those views, and we should do nothing but what is right and just and fair and proper all the way.

The ACTING CHAIRMAN. What was the Massachusetts plan?

Mr. DAWSON. That was simply the old thing that existed before this preliminary term even was invented. Some Massachusetts com-

panies were finally given preliminary term privileges for a time, but with that exception the State has always refused to recognize the mere writing of a policy and calling it a preliminary term policy for a year as giving it the right to that kind of valuation.

Mr. AMES. Will you explain to the committee why the preliminary term is necessary?

Mr. DAWSON. It, or select and ultimate instead, is necessary, because the company could not out of the first year's premium put up the reserve required by the Massachusetts law.

The ACTING CHAIRMAN. Your point is that the company estimates on the present deaths, without reckoning on selected lives in the beginning or without making it a temporary term; then the first premium is not sufficient to pay the agents' commissions and expenses and the cost of insurance, and some of that expense has to be carried by other policy holders who have no part in that particular line of policies?

Mr. DAWSON. Yes.

The ACTING CHAIRMAN. I think that I have taken your point.

Mr. DAWSON. You have; very clearly. Now, I might call your attention to the fact that this is no small matter. There was testimony before the Armstrong committee that in the case of one company they had \$14,000,000 of the old policy holders' money soaked in that manner, and according to the evidence that we brought out in Canada, where I am acting as the actuary of the royal commission, the same sort of condition of affairs was disclosed.

The ACTING CHAIRMAN. The rush for new business in the last few years has resulted in loading the old policy holders with expenses that do not belong to them, and it should be prevented if it can be prevented properly by law.

Mr. DAWSON. I am very glad to have the statement clarified by the chairman. I want to make a confession before you, because I stand before you as a recent convert to this, and when I have spoken of it I do not want you to think that I have exhausted all that ought to be brought to your attention in the making of a model bill. I refer to my conversion to the limitation in any regard upon life insurance—limitation and restriction.

The ACTING CHAIRMAN. What sort of limitation?

Mr. DAWSON. I am about to explain. My conversion to anything of that sort dates from the time the Armstrong committee put in its first report. Before that committee I protested against the limitation of the first year's expenditures, for instance, up to the last moment before the report was signed and sent in and the bills were completed. The last words that were said by myself to the chairman of the committee and the committee itself were that I still felt that their limitations, and especially their limitations upon the expenses of a company, even in the modified form, were unwise and that publicity was wise.

Now, it is always wise for a convert to give his reasons why he became a convert. I will just say that my reason for being opposed to limitation is that when you have made the nature of things right the published facts ought to compel the companies by the mere force of the moral power of the community to be decent. But, gentlemen, I am sorry to say, I am exceedingly sorry to record, that the committee and its counsel were enormously wiser than I on this matter;

and while I am not a convert yet to the proposition that permanent limitation will be necessary, I am absolutely convinced that the necessity for limitation exists at this time, and that if it is omitted from the model bill you will have struck a blow at the reform of life insurance which will absolutely render them nugatory. Why? In the United States, for instance, let us take one company, one of the best in the country, paying among the largest rates of dividends to policy holders—the Northwestern. Since then they have been investigated by a committee in the State of Wisconsin, for which I was also actuary. Now, that committee brought out that last year this company lived within the select and ultimate margin, plus the loadings, according to the New York law, by the amount of more than 10 per cent of the provision; that the expenses of obtaining new business were \$1,750,000, and that the margins, plus the loadings, were \$2,000,000.

If it is true that decent, well-governed, well-established companies in this country can do this and be successful, then I would like to ask if it is not true that some of the others that are not decent and well governed in this particular ought to be compelled to do it? We found this situation. Mind you, gentlemen, when you depend on publicity you mean that people will be shamed into doing things; that they will say, "Why, in competition we can not afford to be put in a bad light." That is the meaning of it. But when you find them rushing to Albany to those hearings and urging that this ought not to be done, that publicity ought to remain, and they were perfectly satisfied to have it remain—I notice that it is not in this bill, even in the publicity form, by the way—when you find them rushing to Albany with that kind of an argument, and when you discover that all through the investigations of the Armstrong committee this high-pressure business, this disgraceful business of giving policies away through the country was going on, the same disgraceful condition that has disgraced American life insurance for years, continued, worse than before; that in the city of Pittsburg the agent of one company quit his own business in that city to take up the business of giving away life insurance in that city to the amount of millions of dollars for another company, you can see what the condition is.

In the city of Chicago one of the Massachusetts companies disgraced itself by making 95 per cent rebates while the Armstrong committee was in session. And when you find these companies demonstrating absolutely that they do not intend to be decent, when you find the life underwriters' associations starting out to fight, not anything else in the bills, but with all the force at their command—the arch rebaters starting out with this object, to fight the limitation placed on the cost of new business—and when you find that it is only a limitation to a figure higher, for the Northwestern could have paid 10 per cent more than it did pay, higher than enabled the general agents of that company in Chicago to reach \$165,000 of annual renewal income—I think you can see the seriousness of that situation. Now, gentlemen, I want to leave that with you. I do not care, really, to go beyond it. Your bill will be destructive of the best interests of life insurance in this country if you leave that evil

untouched, and if you then put it forward as a model that other States ought to follow.

The present situation is that if the existing legislation in New York is left untouched—and a part of this conspiracy is that as soon as it takes effect, as soon as the next legislature sits, they will get it kicked out—but if it is retained in New York, then you have the condition that the companies in New York will have to live within that limitation, and it will mean that the companies that come into the District of Columbia and into the States that follow this “model” will go on as they have gone, in ruinous competition, wasting the policy holders’ money, making the cost of insurance greater to every man of you, and to every one of your constituents throughout the country. And all to what purpose? Not even to the enrichment of the agent, because what the agent does is to give it dishonestly away to the larger purchasers of insurance; absolutely no advantage to be reaped from it. Now, gentlemen, my conviction arises from the existence of an emergency. We are here mainly because of an emergency. The emergency does exist.

Mr. STERLING. May I ask you a question there?

Mr. DAWSON. Certainly.

Mr. STERLING. You say that this bill does not provide for any method of publicity?

Mr. DAWSON. This bill provides for no method of publicity showing the expenditure for the first year of insurance, and what the company has without taking the old policy holders’ money to meet those expenditures.

Mr. STERLING. What method would you propose?

Mr. DAWSON. I suggested that in order to prevent your measure from being absolutely vicious it would be necessary to require the companies to report what margins they do have, according to their own methods of valuation under the bill, and what they actually expend. I propose now that if this is really to be model legislation you ought to adopt the select and ultimate method of valuation, and adopt the same lines laid down in the Armstrong bills and in the laws of New York requiring them to report the loadings on the first year’s premium, and the margins given by the select and ultimate method, and then should limit them to those margins exactly as the New York law limits them.

The ACTING CHAIRMAN. I notice on page 40 of the Armstrong bill, section 89, that discriminations are prohibited as to all life insurance corporations doing business in the State.

Mr. DAWSON. That is right.

The ACTING CHAIRMAN. While in section 97, as to limitation of expenses (p. 51), it is limited to domestic life insurance corporations.

Mr. DAWSON. The limitation is as to domestic corporations as to the expenditures of the first year; but please look at page 53, the next to the last sentence. That was done purposely, and I would recommend a similar consideration to yourselves. It is not right, really, for a State to attempt to dictate to a foreign corporation. All the State can do is to say what foreign corporations must do if they stay in that State. This reads:

A foreign life insurance corporation which shall not conduct its business within the limitations and in accordance with the requirements imposed by this section upon domestic corporations shall not be permitted to do business within the State.

The ACTING CHAIRMAN. That covers it. I see what you mean. Now, is there any difference in this question of loading, etc., or rather of commissions, etc., such as a doctor's fee, for instance, with reference to very small policies? I see it says that the doctor's fee shall not exceed so much.

Mr. DAWSON. The smaller policies—that is, industrial policies—are omitted from these limitations. The entire purpose of the Armstrong committee is to deal with the expense evil in what is known as ordinary life insurance.

The ACTING CHAIRMAN. Does this cover industrial business?

Mr. DAWSON. Yes. This is on page 53 also:

This section shall not apply to expenses made or incurred in the business of industrial insurance nor, except as to the limitation of expenses for the first year of insurance and as to compensation of and loans and advances to agents or solicitors, to stock corporations issuing and representing themselves as issuing nonparticipating policies exclusively.

The ACTING CHAIRMAN. I see; right at the end of that section.

Mr. DAWSON. I think it proper to add to what I have said to you that unless you desire to use the imperfect standard policies that the New York bill first had in you ought to substitute the perfected policy forms that were actually enacted in New York. This bill as it reached me was copied from the imperfect draft, and was not as it was finally fixed. There were quite a number of corrections made in the standard policies.

Mr. BIRDSALL. What is your view as to the necessity or propriety of fixing standard policies?

Mr. DAWSON. When the idea was first suggested to me by the committee I protested and urged reasons against it. They asked me then to examine all the policies of all the companies, and I was surprised to find that the differences between them were not important and that a standard policy could be drawn, apparently, that would not be unfair to the companies and that would give to the insured the assurance that when he bought in one place he was getting the same thing as when he bought in another, and I became a convert to the idea that a standard policy was a good thing.

Mr. BIRDSALL. Assuming that the standard form adopted here in the District of Columbia should vary in some essential particular from the standard adopted in New York, would it make such a discrimination?

Mr. DAWSON. Our form in New York is imposed only on the New York companies. If you impose yours only on the District of Columbia companies there will be no difficulty of that nature.

Mr. BIRDSALL. But suppose there should be an essential difference between the two prescribed policies, would the company in New York be affected in its business at all by the policy here?

Mr. DAWSON. No, sir; your company could go there and write anything that it wanted to, or the New York company could come here and write anything that it wanted to. Our standard policy does not apply to the company coming from here there, but merely to the New York State companies.

Mr. BIRDSALL. I understand that; but there is nothing in your laws in the State of New York that would punish the using of a policy which varied from the policy which the New York companies were compelled to use?

Mr. DAWSON. It would not punish for variations from the policy there, but it can vary from the standard form of the District of Columbia as the law provides it here, provided it did not violate the law of New York. There are laws concerning the division of surplus, and so forth.

Mr. BIRDSALL. Of course, every State would have prescribed the standard form for a company doing business in that State?

Mr. DAWSON. Yes; that is correct.

Mr. BIRDSALL. And would it not be possible, and perhaps probable, that conflict might arise?

Mr. DAWSON. It might arise.

Mr. BIRDSALL. And the result would be that the foreign company could not do business in the District?

Mr. DAWSON. If the State should make it applicable to all the policies issued in the State of New York it would affect a foreign company. If it made it applicable only to policies issued by its own companies, as we did in New York, it would not affect the outside company.

Mr. BIRDSALL. Then an exception applicable to the foreign companies who come to the District to do business would save that difficulty?

Mr. DAWSON. I may say in that connection that the policy form which has been adopted in New York has been given very much more careful consideration as to the effect of every one of these provisions as a matter of law upon the interests of policy holders, I venture to say, than any other policy form ever adopted anywhere in the United States. I say this merely as the result of very long personal experience.

Mr. BIRDSALL. Would it not be better to let the foreign company do business in the District of Columbia if it complied with the law of the State of its origin?

Mr. DAWSON. I think if you would only adopt the law, leaving out foreign companies, it would be very much better. Gentlemen, I very much hope that the work of your committee will be satisfactory to you and to the country. I have finished.

Mr. ALEXANDER. One or two questions I would like to ask you. If you were the chairman of a committee to draft a model code of insurance for the District of Columbia, whom would you assemble about you, what interests, in order to get together on something that would be accepted by all the gentlemen present, or who have been here yesterday, as a proper code?

Mr. DAWSON. I think I would rather answer that in a little broader way.

Mr. ALEXANDER. Certainly.

Mr. DAWSON. In the first place, I think if I was going to advise your committee in the matter I would recommend that you defer definite action on the matter until Congress reassembles in December, and I would ask for a proper appropriation to carry on the investigation merely as to what the law should be—I am not talking about the operation of the companies—through the summer vacation.

I recommend this not only because you would get rid of all possibilities of haste and would have a proper opportunity to study this throughout all its branches and details, but because Wisconsin has a

commission of very high quality; which is now at work turning up entirely different things from what we turned up in the Armstrong committee work, and Canada has a royal commission at work on the same thing. Both of those bodies will make their report before your report will be due. Then, in addition, the superintendents of insurance meet in their regular convention in September, and the committee which was appointed at Chicago is expected to report in August, and that will be ready for the convention, will it not?

A BYSTANDER. Yes.

MR. DAWSON. Now, while I have made a very serious charge against the life underwriters' commission, or the committee who are governing it, I am very far from saying that there is anything but the very best possible motive on the part of all those gentlemen who are members of that committee; and even with those gentlemen it is only their pocketbooks which they are thinking of, and men are excusable, I suppose, for thinking of that. All the things that will take place within the next few months, all the things that are errors of omission or commission, will come to light by the time of the convening of the next session. Before your report would be made even the elections under that disputed election provision will take place. You will have an opportunity to get a much more mature view, to take up each section of this bill by itself, as these gentlemen here representing the actuaries' committee know that the Armstrong commission did. They spent not even an hour or two hours only on the whole bill, but they spent hours, if necessary, on a single paragraph of the bill. For it is just that kind of microscopical, anxious, careful, thorough consideration that is necessary to make even a decent bill on this subject, let alone a model one.

MR. ALEXANDER. You have not answered the question yet.

MR. DAWSON. I am sorry. I tried to.

MR. ALEXANDER. Who would draft such a code that would take in all you said?

MR. DAWSON. The best furnished man in the United States for the purpose is Charles E. Hughes, unquestionably, and the second is probably Senator Armstrong. But I know, without being better acquainted with you than I am, that your committee is perfectly capable of doing it, if you will take the time to do it, get the proper appropriation to do it, and give your time and attention to it, and invite from every part of the country every suggestion in writing or verbally that can be made. Get your draft ready; give it out to the public; give other public hearings on it. I am supposing that you will have got it to the point where you think it is perfect, or as near perfect as you can make it. Let every line and word of it be discussed, and every point brought out, and give time to it, and when you get through I am satisfied you will have done work that you will be proud of. Otherwise there is grave danger that the erroneous impression which I understood Mr. Ames to avow—and which I do not at all think is his real opinion—as to the proper means of having a model code, may prevail, namely, that it be simply the opinion of the majority of a group of men engaged in the business under present conditions.

MR. AMES. I think you are misstating the case unintentionally.

MR. DAWSON. I certainly have no intention of misstating it.

Mr. AMES. Not the majority, but every interest should be considered, at least.

Mr. DAWSON. There is no question of it. Every solitary interest and every solitary view, every selfish view and every other kind of a view, should be considered. If there is any virtue in the work done by the Armstrong committee, it is due to the absolutely unwearied patience of Mr. Hughes and Senator Armstrong, which caused long delays at the time, because they did not want to let the thing out until it was right; and I will ask you gentlemen who are hear to bear witness to the truth of what I say in that matter. If there were mistakes made, they were made after and despite every possible effort to avoid them.

Mr. STERLING. There is but one interest to be considered, after all, in this, and that this is of the policy holders; is not that true?

Mr. DAWSON. That is true; and yet all the persons engaged in the business represent the policy holders' interest.

Mr. STERLING. Yes.

Mr. DAWSON. The agent represents it, because he knows what is necessary for him to get the policy holder. The officers of the company are the custodians of the policy holders' money. But you are quite right that the ultimate thing is the interest of the policy holder, and that is the reason why I so realize the importance of this legislation, because under the existing circumstances in the United States there is going to be a determined and persistent effort made to revert to the old conditions—to return to the position of being allowed to take all the policy holders' money above the legal reserve and to "blow it in."

I thank you very much for your attention. I feel that I have trespassed very much on your time. I am very glad to have met you and hope that I may have the opportunity to be with you again.

————— (Name of company.)

Profit and loss statement for year 1905.

	Total.	Profit.	Loss.
1. Loading, first year premiums			
Net expected death losses in the year 1905 in respect			
of policies issued in that year			
Less net actual death losses in that year, in respect			
of such policies			
Total margins on first year premiums, 1905			
Less expenses (as per schedule) first year			
2. Loading, renewal premiums paid during 1905			
Less all other expenses except taxes, repairs and investment			
expenses			
3. Net expected death losses in 1905 other than in respect of poli-			
cies issued in that year			
Less net actual death losses in that year other than in respect			
of such policies			
4. Net expected annuity claims maturing in 1905			
Less net actual annuity claims maturing in 1905			
5. Interest, dividends, and rents received during 1905			
Less taxes, repairs, and investment expenses for 1905. \$			
Less credited to special funds in 1905			
Less required to make good the reserve in 1905			
6. Profits from sales or maturity (as per schedule)			
Less losses from sales or maturity (as per schedule)			
7. Increase of market values (as per schedule)			
Less decrease of market values (as per schedule)			
8. Reserves, released by surrender and lapse			
Less surrender values allowed			

Profit and loss statement for year 1905—Continued.

	Total.	Profit.	Loss.
9. All other profits (as per schedule).....			
All other losses (as per schedule).....			
Total profits and losses			
Net profit or loss.			
SCHEDULES—EACH IN DETAIL.			
1. Expenses, first year of insurance, to include—			
All commissions upon the premiums for the first year of insurance.....			
All bonuses, prizes awards, and allowances to agents.....			
All advances to agents.....			
All medical examination fees and inspections.....			
All other expenses (if any) of the new business for 1905.....			
2. Profits from sales or maturity.....			
3. Losses from sales or maturity.....			
4. Increase of market values.....			
5. Decrease of market values.....			
6. Sundry profits and losses, particularizing item 9 above			

**STATEMENT OF MR. A. A. WELCH, SECOND VICE-PRESIDENT OF
THE ——— LIFE INSURANCE COMPANY.**

Mr. WELCH. Mr. Chairman and gentlemen, at the time of the public hearings in New York the actuaries of all the different companies were asked to meet in New York to consider certain parts of the bill from a purely scientific standpoint; and at that meeting there were representatives, I believe, of 26 companies, and that body were unanimous, I think, on five or six points of the bill, and that committee appointed a committee to go to Albany, and they were asked to meet the Armstrong committee in New York, and simply as a member of that committee I was asked to come here to help this bill a little, but not to speak for it.

I do want to differ with the gentleman who has just spoken in one or two particulars. The Armstrong bill, as Mr. Rhodes and myself saw it, is an incomplete one, and avowedly so by Mr. Hughes and Senator Armstrong. Time and again when Mr. Rhodes and myself brought up sections which seemed to us to work great hardship to some of the companies, and especially to younger companies and those still unborn, for whom the committee were trying to legislate, we were told that the Armstrong bill must meet a unique condition in New York, it must be drawn in a special manner, and that on account of the conditions existing great hardships must be put upon innocent companies. That was stated time and time again, and I think it is only just to bear that in mind when the Armstrong bill as a whole is taken as a measure that has been carefully considered and might be used as a model bill.

Among the articles which the 26 actuaries unanimously agreed upon there were two which do not appear in this bill. The standard policies they unanimously agreed would not be for the best interests of life insurance, nor for the best interests of the insured. The surrender value has been modified to an extent which I think they will all agree to. The dividend clause in this bill, which at first was modeled after the Armstrong bill, which in this very particular was drawn in a way which would work great hardship to the companies, injustice to policy holders in certain companies, but was

necessary on account of their peculiar conditions, as we all acknowledged, has been remedied in the suggestion which Mr. Ames has brought to you, and the contingent reserve also. So what I have to say is almost entirely—

The ACTING CHAIRMAN. We have not had that defined. What is the contingent reserve?

Mr. WELCH. It is really the surplus of the company. I forget the number of the section which is in the bill. The Armstrong bill attempts to limit, and does limit, the surplus which a company is allowed to hold.

Mr. AMES. It is page 44, section 48.

Mr. WELCH. Requiring that it shall divide all the surplus over and above certain limits. I do not know that I have any quarrel with that as it appears.

In the limitation of expense which has been spoken of there are grounds for differing with the gentleman who has preceded me, and certainly in the limitation portrayed in the Armstrong bill. We have it from Mr. Armstrong and Mr. Hughes himself directly that avowedly it does work a hardship to a small company—a great hardship—and one that it seems as if it would be almost impossible for one or two companies to live under in New York—legitimate, good, young companies.

The section which measures the value of a policy to a company is not a scientific one, because that is impossible to gain. It is as near scientific as you can put it, but it is a matter of judgment, in which no man's judgment is better than any other man's judgment, in which another man's judgment is as good as mine; and certainly the value of a policy to a company is never, in the company, measured by its first five years' savings in mortality. The mortality savings in a company go away between the first five years. There are other reasons which make a policy more valuable. I only speak of that because it was so urged upon you at this time that the limitation of expense should be confined to the limit of five years. I do not agree with that. I do not think that my brother actuaries would do that either.

In the whole question of the model bill I think that it would require a great deal of time to draw one. Certainly I think that what Mr. Dawson's ideas were at the outset tally more with mine than his views now, that complete publicity would rectify a great many of the evils that he has portrayed, and I do not believe that any model bill should be drawn, or that there is any necessity of a bill in the District of Columbia to be drawn which would limit the expenses in the way that they have done in New York, to meet the special troubles which have arisen down there in a few companies.

That is all that I have to say to you.

STATEMENT OF MR. CHARLES W. SCOVEL, PRESIDENT OF THE NATIONAL ASSOCIATION OF LIFE UNDERWRITERS, PITTSBURG, PA.

Mr. SCOVEL. Mr. Chairman, on behalf of the Life Underwriters' Association I would like to say just a word.

Mr. AMES. You are the president of this association?

Mr. SCOVEL. Yes; and the signer of this letter which Mr. Dawson referred to. I simply wish to say at this time that I was unfortunately and unavoidably called from the room at the beginning of

the hearing this afternoon, and there seems to be some very serious misunderstanding, from what I have been told, as to what Mr. Dawson said, and I would like to have the opportunity of reading Mr. Dawson's words in regard to the Life Underwriters' Association before addressing you to-morrow. After I came in I heard reference made to a conspiracy, or something of that sort, in which the life underwriters were parties. That is wholly a misunderstanding, as I know, and I will be glad to have the opportunity in the morning of replying.

The ACTING CHAIRMAN. You can see the stenographer and get from him what Mr. Dawson said.

STATEMENT OF MR. JAMES M. CRAIG, ACTUARY OF THE METROPOLITAN LIFE INSURANCE COMPANY.

Mr. CRAIG. Mr. Chairman and gentlemen of the committee, I hardly knew why I came here at first, but I have received a very clear conception of it, and I may say that I am in very hearty sympathy with the effort which is being made for the purpose of securing a model code of insurance. As a person having had somewhat to do with the work in the office connected with the insurance laws of the several States in the Union, I have long felt that it would be a most desirable thing if we could have some uniformity among those laws, and when I learned that back of this suggestion and back of this effort stood the moral support of the committee of fifteen appointed at the Chicago convention, composed of representatives from all the States representing the insurance interests throughout the country, I said to myself, "Here is a beginning which, if properly followed out, gives promise of something for the future," and I know of no effort which has ever been made with so healthy a promise as this one. It is not the mere fact that an effort is being made in the District of Columbia as the basis for other States to follow, but the support which is behind this effort, the insurance interests throughout the country, is an evidence of the fact that if a model code is presented here it will be adopted almost throughout the entire country, and if that result should be accomplished, I think, gentlemen, it will be worth all the time and all the effort and all the patience you are willing to give to it.

STATEMENT OF MR. JOHN A. GORE, ACTUARY OF THE PRUDENTIAL LIFE INSURANCE COMPANY.

Mr. GORE. Mr. Chairman and gentlemen of the committee, I have nothing specific to add to what has been said. I believe the actuaries of the companies, and the companies themselves represented to-day by a number of actuaries, are heartily in favor of a model code. There is one thing that we feel sure of, that when this particular code is finished, if it is finished this session, it will not be model in our sense of the word. Colonel Ames realizes that, and we all do. But it is our sincere desire to have the reform of American life insurance brought about, and it is our desire not to have the pendulum swing too far the other way, so as to have mistakes made.

I should like to say that the only prominent feature now of the Ames bill that I should like to see changed is the standard-policy

feature. I should not feel satisfied to have had the opportunity to speak before this committee without saying that. I believe that a standard policy in the sense of furnishing the actual wording is inadvisable. It is the experience of probably every company in this country that if certain flaws are found in their policy, and they begin to get up a new form, perhaps a month or two months will be spent upon it, and then it will be laid aside, and then another month or two months will be spent upon it, and those who work on that form of policy have the advantage of years of experience with their company. Certain companies can afford to do things that others can not. There are companies represented here to-day that could afford in their policies, perhaps, to put a two years' surrender clause. There are younger or other companies that could not afford to do that. Some companies provide for loans in a certain way, and other companies provide for loans in a different way, and each way provides for the needs of certain policy holders. Some companies make the policy form of the policy itself a receipt for the first premium, and the agents of that company are trained year in and year out to bear that particular fact in mind.

No one finds any fault with that particular feature of the policy. But there are other companies whose agents have been with them for a generation almost, who do not make the policy itself a receipt for the first year's premium, but have a separate receipt, and their agents are trained to follow that course. Now, that will have to be changed. There will be serious mistakes, and legal questions will arise which we are not prepared to meet. I could go through this standard-policy form—the one in the Ames bill or the one in the New York State law—and find many, many things which may not be wrong, but which will cause changes in practice. Aside, however, from the standard-policy form, I should like to say that I have nothing fundamental besides the objections that have been brought in against the Ames bill.

The ACTING CHAIRMAN. As amended?

Mr. GORE. As amended. I have been fortunate enough to be one of the committee of seven actuaries appointed by the meeting of 26 actuaries in New York early in the season to work over the Armstrong bill, and I must say this for that committee, that it represented all phases of what we call the old-line business, and it was a splendid sign to see actuaries give in on certain points that they would have liked to have insisted upon, to help the general cause. I suppose there was not a company represented on that committee that did not gladly yield certain points it would have liked to have seen brought into the bill, or that did not refuse to fight points that it would have liked to have seen go out of the bill for the sake of the general cause of life insurance business, which means always in our minds the general interests of the policy holders.

Mr. STERLING. May I ask the gentleman a question?

The ACTING CHAIRMAN. Yes.

Mr. STERLING. By what rules do you determine whether a life insurance company is solvent or not?

Mr. GORE. By what rule do the companies determine it?

Mr. STERLING. Yes; or you. If you were to determine whether any particular company was a solvent company, by what rule would you

measure their solvency or insolvency? You would not hold that it was necessary that that company have a reserve—sufficient money to pay all the policies that are outstanding?

Mr. GORE. If deaths should occur in every case immediately?

Mr. STERLING. Yes. Suppose they should become liable to pay every policy in a day.

Mr. GORE. Certainly not. Our general rule of solvency would be that a company should have on hand funds enough to meet death claims.

Mr. STERLING. As they are likely to occur according to the mortuary rules?

Mr. GORE. Allowing for interest upon the funds the company has, and allowing for many details, such as being certain that the funds were all that they were represented to be in value. But the general rule would be that.

Mr. STERLING. Then what is the occasion for life insurance companies to accumulate these vast sums of money? What advantage is that to the policy holders for them to accumulate more than is necessary to meet the mortuary losses as they occur, or as they are liable to occur under the rule?

Mr. GORE. You realize, of course, that the company holding deferred-dividend policies should gradually accumulate funds that would mature as dividends at the end of various dividend periods. Companies having annual-dividend policies of course would have normally a much smaller fund for such purposes, because the dividends mature each year, and they should hold enough to pay the dividend coming due the next calendar year, judgment being passed at the end of the calendar year.

Mr. STERLING. Have not companies accumulated a great deal more than is necessary to meet all those obligations as they would naturally arise?

Mr. GORE. All companies have accumulated what is known in the Ames bill as the "contingency reserve." It is known under the same name in the New York law as it is at present—what we generally call a surplus, which is to provide, of course, for emergencies and for shrinkage in market values, for possible epidemics, for unexpected increases in the death rate. It is likely that the judgment of the officers of the company may at times raise such surplus fund, contingency fund, too high.

I beg your pardon, but it has been suggested to me that perhaps I misunderstood your question. You mean the contingency reserve, or surplus, or the actual fund held to meet—

Mr. STERLING. I may not know enough about it to ask intelligent questions; but the question occurs to my mind. Why is it necessary to have these vast accumulations of money in the hands of these old-line insurance companies? Would they not be entirely solvent, and could they not pay their obligations on their policies just as well if they had accumulated much less money than that? Even if the premiums they collected from the policy holders had been less, and thereby they had accumulated much less money, would they not be just as safe companies to the policy holder as they are now, and thus avoid the accumulation of so much in the hands of the life insurance companies?

Mr. GORE. Suppose, to simplify the question, we leave out all poli-

cies that participate in dividends and come right down to what we call a "nonparticipating basis." Now, every company should hold, regardless of any emergency fund, what we would call an "emergency fund." It should hold at any given time a sum of money which, if that company should stop doing business in the sense of getting no more new business—not stop in the sense of not receiving premiums from those who have made contracts—which, with the premiums coming in and with the interest accumulations would pay, according to an assumed death rate, all claims as they matured by death or by the maturity of endowments, until the very last person insured had been paid at the maturity of his policy, or had died. Any fund less than that would make such a company, in the ordinary sense of the word and in the judgment of all those who know about the business, insolvent.

Mr. STERLING. That is, assuming that all new business should stop?

Mr. GORE. Yes.

Mr. STERLING. Is it necessary to proceed on that basis—that is, to assume that there might come a time when all new business would stop?

Mr. GORE. I merely made that assumption to try and simplify the question. If new business comes in, then reserves must be accumulated to meet your new business as it matures.

Mr. STERLING. Yes.

Mr. GORE. For example, if a company has 10,000 persons insured, suppose it so happened that they were all 40 years old. Now, of that 10,000 perhaps 100 will die during the first year from the date we take. If they were all insured for a thousand dollars, there would be \$100,000 to be paid out; but all of those people who are insured are paying premiums, which would increase the fund. Every year certain ones would die, but the company has a fund on hand on which it is drawing interest, and it also gets premiums from those. Assuming that it does not add any more to the list, they will all finally die off, and under the existing conditions to-day each will have been paid his thousand dollars—his estate will have been paid that money—and things will work out so that at the end there would not be anything left.

Mr. STERLING. Would it not have done that if there had not been a dollar of reserve? It would have been paid out in the end, would it not?

Mr. GORE. You mean by increasing the premiums?

Mr. STERLING. That is, if the premiums had been fixed correctly in the first instance? I presume the theory is that every man pays for his own insurance, presumably?

Mr. GORE. There is one very important feature that I was just about to bring out, that if each man should pay each year an increasing premium corresponding to his increasing death rate, the plan you speak of, which is known as the natural-premium plan, would work out. But it has been found in practice that if there should be, we will say, any cause whatever to disturb those 10,000 persons, if some of them felt that the company was not safe, for instance, they could get insurance elsewhere; those with what we call standard lives would seek insurance elsewhere and the others who could not get insurance elsewhere would naturally stay as long as they could raise the money with this company, and that would greatly increase the

death rate, and for those who were left the premiums that had been set would not be sufficient.

But the point I did not make plain is that the death rate increases every year—and it increases, not in a straight line, but in a curve—until toward the end of life the increase itself is very rapid. Now, what we call the regular old-line insurance company charges more than a sufficient premium in the early years to carry the insurance and gives protection to each person year by year, and accumulates from that a fund, so that as life advances and this individual is not paying enough money to carry himself, this fund is drawn upon until it works out, and, as I said, at the end all receive in due time the full amount of insurance.

Mr. STERLING. I see your idea.

Mr. BIRDSALL. What company are you in?

Mr. GORE. The Prudential, of New York.

Mr. BIRDSALL. Do you calculate to pay a specific amount at the end of twenty years, or ten years, on these endowment policies?

Mr. GORE. Yes, sir; that is the custom of all companies that issue endowments. A specific sum at the end of that time, or, of course, in case of death, it would occur previously.

Mr. BIRDSALL. Is that a specific agreement to pay, or an estimate of what you will pay.

Mr. GORE. No; there is a face amount of the policy. Say the policy is for a thousand dollars. The agreement is specific to pay you that thousand dollars. There is what we call a participating policy, and in that the dividend is added.

Mr. BIRDSALL. Then the question of whether the premiums paid by a single individual would compensate you or not, or compensate him at the end of the policy, depends upon the manner in which you have invested the money?

Mr. GORE. Yes. There is a certain amount involved on the face of the policy.

Mr. AMES. I should like to ask Mr. Gore's opinion, if it will not embarrass him, as to the select and ultimate method of valuation of policies. I should like to ask, first, if you know of a company, before this Armstrong committee investigation, that valued policies according to that plan?

Mr. GORE. I do not happen to know of any such company.

Mr. AMES. Then it would be considered practically a new and untried scheme; or would it not?

Mr. GORE. Well, I should say not, in the sense that those words would seem to imply, because it is not like a new scheme of insurance. It is not like something entirely new in the plan of doing business.

Mr. AMES. It would be a new method?

Mr. GORE. It would simply be a new method of calculating the liabilities—what we call the "reserve liability" of the company—during the first four or five years of the history of the company's policies.

Mr. AMES. Do you think it would be a better method to follow in a model code for the District of Columbia than the select and ultimate method, or vice versa?

Mr. GORE. I must confess not to have given as much time and thought to the select and ultimate method, for this reason probably more than any other, that we have had to give most of our thought to

matters that pertained to the larger companies—to the companies that were older and more important. This select and ultimate method might be of tremendous importance to a new company. It is based upon an estimate of the saving in mortality that the companies receive, as has been explained by Mr. Dawson this afternoon, and it assumes that the saving in mortality stops at the end of five years, although Mr. Dawson has taken that as a definite and practical period, because he realizes, as we all do, that the saving in mortality does not stop at the end of five years, but, as I take it, this is thought to be by Mr. Dawson a workable period.

The companies have a lower mortality than the normal mortality possibly would seem to give them, because of the selection, on account of medical examinations. The select and ultimate table takes care of that, and its reserves are based upon it. Only new companies would be compelled to use such a table, and it seems to me that the companies that would not be compelled to use it would not choose to use it. If a new company is to be limited in its expense rate, as the New York law now provides, of course it would be. I think, impossible for a new company to start in the State of New York or to start anywhere else in this country if it intends to do business in the State of New York, without having some scheme to help it along during the earlier years, and the preliminary-term plan has been adopted by companies to help them through the trying period when everything is new, which means that everything is expensive, and the select and ultimate method is another method of helping the companies. I hope never to have to use this method, but I do not see any harm in the method.

The ACTING CHAIRMAN. How much do they reckon on—what proportion?

Mr. GORE. I believe during the first year it is calculated that 50 per cent of the normal mortality will be experienced by a company. Mr. Dawson can give it to you better than I can. Fifty per cent the first year, 65 per cent the second year, 75 per cent the third year, 85 per cent the fourth year, and 95 per cent the fifth year. Of course that is purely arbitrary. There is no company whose mortality does run along that way. Some of us might have a higher percentage some of those years and a lower percentage in the seventh, eighth, or ninth year, and it might run up to 100 per cent for a while.

The ACTING CHAIRMAN. Have the actuaries' tables of America ever been analyzed on those principles, from end to end?

Mr. GORE. They have not, as a mass.

The ACTING CHAIRMAN. I believe these tables were made up some years ago—such tables, or actuaries' experience tables, different from the old Carlisle experience tables?

Mr. GORE. Yes; but they do not represent the American experience generally. The American experience table is based on the experience of the Mutual Life Insurance Company.

The ACTING CHAIRMAN. Have any tables been made up that get at this saving with great accuracy on the second, third, fourth, and fifth years?

Mr. GORE. Not with great accuracy, because not enough lives have been involved to make the table follow evenly the law of probability; but the different companies have reported their experience, and probably every company has worked out its own experience for its own

satisfaction; but there has been no combined table showing what the result of these experiences would be in great numbers of lives.

The ACTING CHAIRMAN. Have these companies varied very much, or have they come to about the same conclusions that you have stated?

Mr. GORE. I should imagine about the same conclusions, except that the savings in most companies would cover a longer period of years.

Mr. BIRDSALL. Do you advocate any limitation upon the expenses of the first year's business?

Mr. GORE. I would not.

Mr. BIRDSALL. Do you think it would be justifiable to allow the entire premium for the first year for the expense of obtaining the business?

Mr. GORE. Will you kindly repeat your question?

Mr. BIRDSALL. Do you think it would be proper to allow the whole premium for the first year to cover the expense of securing the business?

Mr. GORE. No; I should not. That would be a matter, of course, of individual judgment; but under the present tendency of complete publicity, and in addition to that, the competition of the company, to pay the very best dividends they can, I believe that that question will not trouble the American public in the future.

Mr. BIRDSALL. You feel that it should be left to the discretion of the companies?

Mr. GORE. Yes, sir; I do.

Mr. STERLING. How do you propose to bring about this publicity? To require the companies to make reports at stated intervals, or just to permit the State or Government authorities to investigate the companies and compel the companies to disclose?

Mr. GORE. There is a section in the Ames bill providing for much greater detail in a company's annual statements which are published and sent all over the country, so that the company must show, for instance, the gain and loss exhibited, and just the sources of its profit. And it must show a number of things more than the companies have been compelled to show in the past.

Mr. STERLING. Do you think, then, that this bill provides a pretty good scheme of publicity?

Mr. GORE. It seems to me so; yes, sir.

The ACTING CHAIRMAN. Is that scheme so stated in the Ames bill as to be approved by you?

Mr. GORE. Yes, sir.

The ACTING CHAIRMAN. One of the gentlemen here said he thought it would make it too complicated. Do you think that is so?

Mr. GORE. I think the reports as brought out by this bill will probably meet the approval of the public. Personally I would not have put every one of the clauses into that section of the bill. But I believe that all the publicity referred to there is perhaps desired now by the public.

Mr. BIRDSALL. This bill provides that the commissioner may withhold it from publication or may cause it to be published in one or more newspapers. That is the publicity which is provided for by this bill, as you understand?

Mr. GORE. Yes; but the reports are also published by the State insurance commissioners.

Mr. ALEXANDER. I was unfortunately called out for a while when you began speaking. Do you approve this Ames bill as a whole?

Mr. GORE. My answer to that would be very similar to one or two other answers that I have heard since this hearing began, that legislation is probable in many of the States during the coming winter, and that it would be a good idea, such being the case, to have a bill passed by Congress that would be a fairly good bill. I believe that the prestige of that will help it along. I do not say unqualifiedly that I approve the Ames bill. I do not consider it a model bill. I believe that it would take more than a year to produce such a bill. I have heard it stated during the noon recess that if five men were chosen, the best men that could be chosen to produce such a bill, and if those five men spent a year on it, and that bill were brought here and a hearing were had, to quote the expression, "it would be shot to pieces." I believe it is a tremendously difficult thing to get a bill that would come anywhere near being entitled to the term "model." But I believe that this is a safe bill, and in view of what will probably happen, I must say that, on the whole, I am in favor of the bill.

Mr. BIRDSALL. You have discovered nothing in this bill that would be detrimental to insurance companies from your view of the business?

Mr. GORE. No, sir; I have not.

Mr. ALEXANDER. Your thought, then, seems to center on this point, that it is very desirable for Congress to pass, assuming it is possible, a bill which may possibly have the effect of avoiding vicious legislation in the States during the next one or two years?

Mr. GORE. Yes; for that purpose chiefly. Otherwise I would most strongly urge Congress to appoint some sort of a commission, possibly, to do something to perfect the bill—more nearly perfect it. Under just the conditions you name I would favor the bill.

The ACTING CHAIRMAN. Have you considered the question of a return being made to an office here in Washington? Would you regard it with favor, or as of no particular advantage?

Mr. GORE. I should think that it was of no particular advantage.

Mr. ALEXANDER. That is a good question. If there should be left out of this bill any reference to having a bureau in the Department of Commerce and Labor, for instance, which would take away any suggestion of Federal control, and a pure, simple insurance code, a model, if you please, were passed for the use of the District of Columbia, do you think that would have the beneficial effect of guiding State legislation that you gentlemen desire?

Mr. GORE. I feel on that point that it merely happens that this is the first legislative body to consider something that might approach a model bill since the insurance commissioners held their meeting. If the State of Minnesota had had its legislature take up this point first, I would have regarded it exactly as I now regard this legislation for the District of Columbia, and would favor rational, moderate, temperate legislation, for the same reason that I gave before.

Mr. ALEXANDER. Then you would be willing to have a bill of this kind passed by Congress if it left out the idea of a bureau of insurance?

Mr. GORE. Yes; I should.

The ACTING CHAIRMAN. Except in the District?

Mr. GORE. Except in the District.

Mr. ALEXANDER. Except for the District, certainly.

The ACTING CHAIRMAN. If there are no other questions, have you anything further, Mr. Gore?

Mr. GORE. No, sir.

**STATEMENT OF MR. J. H. McINTOSH, GENERAL SOLICITOR OF
THE NEW YORK LIFE INSURANCE COMPANY.**

Mr. McINTOSH. Mr. Chairman and gentlemen, Mr. Craig gave his views on the question of the desirability of legislation by Congress in the way that is now proposed, which expressed entirely my own views and which I am willing to adopt from beginning to end.

In a few words I desire to give my ideas, first, upon what is not a model code; secondly, upon what, in my judgment, is a model code, and thirdly, how I believe a model code could be framed.

The bill which you have under consideration is, in my opinion, not a model bill, because it goes into too much detail. Somehow or other the public mind has become infected with the idea that all the details of a technical and complicated business must be done under the whip and lash of legislation. We seem to be abandoning the idea that hitherto has obtained generally, that the details of a great enterprise can be left to the sense and the judgment of the persons immediately responsible for its success or failure. And now the first thought always is to rush to the legislature to get their instructions of how you shall or shall not conduct the details of your business. My ideas of a model code are suggested in some measure by my idea of the constitution of a club that I once saw. The first article of the constitution was, "The name of this association shall be," and then it gave its name. "Article 2. This organization shall be perpetual." That was the charter of the club.

Now, the proposed bill that is here contains a long section telling what sort of insurance contracts shall not be made, and we listened yesterday to a heated discussion of the question against certain plans of insurance, plans that have been adopted and in vogue for more than thirty-five years, and under which there are some four or five billions of insurance now in force in this country. And yet that plan is attacked here, and you are asked by law to change it. My ideas are that individuals should be left perfectly free to make any sort of insurance contract that suited them; that if, for instance, I wanted to make a contract with an insurance company that gave me what is erroneously called "my dividends," or, as the speaker put it yesterday, the change out of the company's pocket every thirty days, or every one year, I ought to be at perfect liberty to make that contract with the company if the company would make it with me.

On the other hand, if on account of my peculiar conditions or my peculiar bent of mind I desired to let that change accumulate in the hands of the company for ten, fifteen, or twenty years, or any number of years, the State should not come and say that I had no right to make that sort of contract. In other words, the details of all contracts should, in my judgment, be left to be worked out between the company and the individual who is making the contract with the company. Why, every day we have people come into our office wanting contracts of a kind that are not generally written by us. Only

the day before I came down here, Friday or Saturday of last week, two people came in who were partners, and wanted a policy on their joint lives. One of them, who was not married, wanted the insurance in the event of his death all payable to his mother, the other in the event of his death all payable to his wife, the survivor to take nothing, with other unusual details. The division of policy issues took up the question of writing the policy and writing it for these men in the way they wanted it, and did it, the actuaries determining the premium required to cover the special sort of risk they wanted. Let the companies make the kind of contracts the assured want to make. Leave it open to the assured to buy the sort of contracts they want. Do not say by legislation what sort of contract you must or you must not make.

Mr. DE ARMOND. Would not that bring it to the idea of your club? Would not that amount to about this: "The name of this company shall be," and then insert the name? "It shall do as it pleases?"

Mr. McINTOSH. No, sir; I shall come to that under my second point. Under my second point I am going to say what I think the model law should be. I offered the constitution of the club as an illustration, perhaps an extravagant illustration, of my idea as to what a model law should be.

Mr. DE ARMOND. I thought you offered that as your idea of the legislation that should be enacted; first, the charter of the company, and then the declaration either affirmatively or negatively that it shall do as it pleases.

Mr. STERLING. That is the way it has got me, Judge.

Mr. McINTOSH. When I come to the second point of my discussion I think I shall explain that.

In the second place, I would not undertake to say to the companies what money they should or should not spend, or to say to them what commissions they should pay to the agents or should not pay, or even what salaries they should pay to their officers or should not pay. I should leave all those in the insurance business just where they are left in every other business in the United States—to the judgment and discretion of the persons immediately charged with the management of the company.

Mr. DE ARMOND. Would not that leave the company practically just where your insurance company was found to be left, where your company was found, after the investigation?

Mr. McINTOSH. Sir, I think the law should leave them just where my company was left.

Mr. DE ARMOND. What do the policy holders of your company think about that?

Mr. McINTOSH. Our policy holders have always been, as a rule, well satisfied with the company's management. To be sure, there are exceptions; so are there in every business. There is a gentleman here who is one of the five State commissioners who spent five months in examining into all our details, and I would be willing to submit to him the question of the economy and sound management of my company; but that, I take it, does not interest this committee. I want to answer any questions that are asked. When, however, I get to the discussion of what I believe is a model law I believe all the objections you probably have in mind would be cured by the legislation I shall suggest.

Mr. DE ARMOND. That is all right. But how are you going to cure it? If you are right about it, there is no cure needed, and if you are right about it, then perhaps the suggestion is not of much practical value to this committee trying to shape legislation on that subject.

Mr. McINTOSH. I do not suppose any person who gives a suggestion here that is not a right one gives anything that is of much value to the committee.

In the next place, I do not think a model code should undertake to say what money the company should or should not spend. The thing can be got at in an entirely different way. Such legislation is paternalism. The New York State legislation is after this fashion. I did not intend to mention this legislation in New York State which you have heard so much about, but I can not help speaking of a little incident that occurred there during the hearings before the committee, the public hearings. The chairman of the committee was closely questioning a speaker. That speaker all his life long, some fifty-five or sixty years, had been a socialist, and is now. When he was pressed by questions from the chairman of the committee he said, in answer to the chairman's question, "Yes, I favor this. It is along the line of enlightened socialism. But," he says, "it goes too far." The committee, not knowing that the man was a Socialist, did not see the humor of the situation.

Gentlemen, this legislation New York State has offered—and I am glad to say they do not claim it as model legislation—is legislation that the grangers of Illinois never suggested the like of, the wildest-eyed Populist of Kansas never dreamed of. Such is now the legislation of the vaunted "Empire State" of New York.

Mr. ALEXANDER. What is that? I did not catch that.

Mr. McINTOSH. I say that is now the legislation of the vaunted "Empire State" of New York.

Again, I would not undertake by any model law to say what kind, what form of contract, the companies should make, or try to fix a standard policy, because that, again, is paternalism. But a so-called "standard form of policy" is particularly objectionable, because it is like a stone wall built across the pathway of progress.

Look over the contracts the companies have made in the last thirty years, and then compare them as they have been evolved down to the present moment, and see what that means. Suppose twenty or thirty years ago some persons had gotten together and created what they called standard forms of life insurance contracts, and the legislatures had foisted these upon the companies: Where would we now be? Take one of the contracts of any leading or recognized company to-day and compare it with the contracts written by that same company fifteen or twenty years ago, and you would hardly recognize that they belonged to the same company, the present contract is so much superior to the old.

Mr. BIRDSALL. Has that grown out of the effort of the company itself to perfect its policies, or has it come about by reason of the conflict between the legal counsel of insurance companies and the courts in their efforts to protect the people?

Mr. McINTOSH. It has grown out of a number of influences. First, on account of the efforts of the companies to perfect their contracts. Second, on account of competition. Competition is the great force

that operates with irresistible power to regulate and perfect the insurance business. And, third, of course, they are improved and fashioned to meet the decisions of the courts. Those three, and I have no doubt there are other influences that have brought about the present evolution in insurance contracts and the perfection of their forms.

But my point is, that if you had had a standard life insurance policy you would have simply had the courts construing the standard life policy as they construe the standard fire policy, and you would not have had this evolution and this great advance. Twenty years ago the life policies were full of limitations, and forfeitures, and fine print, and things that might easily deceive the policy holder. But a contract written by any progressive life insurance company to-day contains none of those things.

Mr. DE ARMOND. Who got up those old contracts with the fine print and obscure clauses that may have deceived the policy holders?

Mr. McINTOSH. They were gotten up by the best lights that they had at that time.

Mr. DE ARMOND. Whom were they gotten up for?

Mr. McINTOSH. For the policy holders and for the companies. For the benefit of the policy holders who dealt honestly with the company and performed their part of the contract; for the protection of the company against dishonesty and unforeseen hazards. The development of the business has thrown up safeguards against these in other directions and made it possible to eliminate them from the policy and to simplify the contract.

Mr. STERLING. On that question, how many people know what kind of a contract they want to make with an insurance company? There is not one man in a hundred that knows more than this, and that is that he wants some protection against death for his family, and he does not know anything about the different contracts.

Mr. McINTOSH. You are undoubtedly speaking something that contains a great deal of truth, but if you simplify all the policies, as the companies are now doing, you get them so that an ordinary man can understand them. You take a policy written by my company, and I believe that an ordinarily intelligent man can understand that policy well enough so as to make up his mind intelligently as to whether or not it is a thing he wants to purchase. I understand when a man undertakes to buy an insurance policy he does not sit down and read it over; an ordinary man does not. But the policy ought to be in such language and in such form that they could do so and understand them.

Mr. STERLING. Do you not think it would be of assistance to that man, the mere fact that a certain form of policy has been prescribed by the legislature? Do you not think it would give him confidence, and be of assistance not only to him, but to the company that insures him?

Mr. McINTOSH. I do not see how it could be. It is an uncommon thing for insurance companies, so far as I have had any observation, to get into any controversy with the insured about the terms of the contract, and that is especially so of the contracts recently made. You will find that they are very clear in all their terms. In your present form of policy, if you want to know how much money you

can borrow on it, you have those figures right there. If you want to know how long the insurance will continue in force if no further premiums are paid, it says all that right there in the table, so that it can not be misunderstood.

Let me give you just a suggestion. We will bring in a form of policy, and put it down here, to be for the future the legal form of policy. Who will determine what the form shall be of this important document? I have had experience with the preparation of one form of policy, and one only. I believe I shall take a little of your time to tell you how that was done, how that was prepared, so that you can just see what it means—the preparation of one of these policies.

When in the New York Life Insurance Company we took up the question of preparing a new policy we met in a room where the table was not quite as long as this one. Excepting myself, everybody there had spent his whole business life in the life insurance business. There were three actuaries, executive officers, and men from every department and branch of the business seated at that table. Taking up the subject, they start in on one phase of it and discuss it. Every man expressed his views, and finally they voted upon it. Then they passed to the next question, and they discussed that in the same way and voted on it, and so on through the whole contract. Then this went to the printer and came back from the printer in clean form. The men would take the form home with them and meet the next day. Maybe there was an article there that ought not to be there, or maybe a comma. Perhaps a better word or phrase would suggest itself to some one, or a different arrangement of words and sentences, as well as provisions, regulating the obligations of the contract. Every word and letter and punctuation mark was rediscussed and voted on, and the paper then reprinted and worked over again until finally gotten into a shape not quite satisfactory as a whole to anyone. This was the process employed by these experienced men, notwithstanding they had written policies before and were only changing their present forms to improve the old. This was all they had in view—to improve, liberalize, and make plain the terms of their contract. It took a period of two months doing the way I tell you to get a policy form finally agreed upon among themselves.

Mr. STERLING. Now, if the other fellow at the other end of that policy understood it just as well, it would do to talk about allowing people to take the kind of policy they want. But they did not hear that discussion. They did not know.

Mr. McINTOSH. Yes; that is all very true; but the legislature, or men who have not taken the trouble I speak of, would not be as likely to get a policy that he who ran might read understandingly as those who had, with the care I have spoken of, finally wrought it out.

Mr. PARKER. Do these advertisements issued by the various companies call the attention of the insured to the forms of the policies and the advantages of the different forms, respectively?

Mr. McINTOSH. Certainly; and the agents, too, do that.

It may not seem so, but I assure you, gentlemen, these people managing these companies are doing the best they can with them. They are not all dishonest men. They are not all trying to put up schemes by which they can deceive the unwary. You know, I have found, in

the time I have been down to New York with this company, that there were men there who believed that they were serving a high and noble purpose, as earnestly and as seriously and as sincerely as any other persons in any other walk of life ever believed themselves to be doing and were earnestly striving to that end.

Mr. ALEXANDER. Mr. McIntosh, what is your idea of the purpose of a life insurance company?

Mr. MCINTOSH. To insure lives and pay the risks when they mature.

Mr. DE ARMOND. And incidentally make money?

Mr. MCINTOSH. No, sir; not to make a dollar of money, if they are a mutual company—as mine is, I regret to say.

Mr. ALEXANDER. Judge De Armond covered the purpose of the question I wanted to ask you next. Is the purpose of protecting the policy holder the first and chief purpose, or is it for the enrichment of certain men who have organized the company?

Mr. MCINTOSH. It is primarily and, as a matter of fact, solely for the benefit of the policy holders, if it is a mutual company.

Mr. STERLING. That is, in theory, you mean?

Mr. MCINTOSH. I say in theory and in practice. You ask me those questions, and I take it you all have in mind my company, for my company has as often been at the head of the columns of the yellow journals as any other—the yellow journals that killed my late president. He was not making money out of the company. He did not use the company for his own enrichment. In season and out of season he stood for the policy holders and used his great abilities for their advantage. He died a poor man. He was a man without an extravagant habit. He was a man who never drank a drop. He was a man who had no bad habits of any kind. Nor is there a man in my company to-day, connected with it as employee, who is a rich man. I do not want to impose my company on you gentlemen. I only feel myself forced to make these personal remarks because your questions, which I welcome, drive me to it.

Mr. STERLING. You must not construe my questions as referring to your company particularly.

Mr. MCINTOSH. Now, I have said what I believed ought to be in a model statute, in this general way, that the companies should be left free to make such contracts as they could make and as the assured wanted; that the law should not undertake to prescribe any of the details of the business, but should leave that in life insurance just as it is left in any other branch of business—to the people who have immediate charge of it, and to the people who deal with them.

Now, my second point will bring out, I think, my ideas of how that can be done. That has been comparatively safely done in the past. In the last twenty or thirty years banks have failed. Out in my former town in Nebraska we did not have a savings bank left after the panic of 1893. Railroads have gone into the hands of receivers and have been reorganized. Stockholders of all sorts of enterprises have lost all or part of what they put into them. But, sirs, not one life insurance company of any considerable consequence has in that period of time met that fate. On the contrary, every one of them, so far as I know, every company represented in this room has promptly and fully met all its obligations and met them at once when they matured.

Mr. DE ARMOND. Does not a life insurance company do tolerably well when the people carrying policies in it fail and policies lapse? Is that not one of the times when they do tolerably well?

Mr. McINTOSH. No, sir; they do not do tolerably well then. You heard a while ago of the surrender value and the expression "cash surrender value" was used; but all policies have the benefit, by the way, of either a cash surrender or a continued or paid-up insurance benefit in the event of lapse. Policies written by my company give a continued insurance benefit after they have been in force three months. And, then, if you pay for a year and lapse you get continued insurance or paid-up insurance for two or three years; for this continued insurance or paid-up insurance you get the benefit of all the money you put into the company. So that there is practically nothing made by the company in that way. Companies do not want policies to lapse. If you have a policy in a good company, let it pass the day for paying the premium and you will see how they will follow after you to keep you free from lapsing. They do not make money out of it; it will cost them money to replace on their books the risk they have lost by the lapse of your policy.

Now, on what I think would be a model code. In the first place, I think a law framed for the District of Columbia should have in it appropriate provisions for the formation of insurance corporations. The details of that would be similar to the details of like laws in almost any State.

Mr. AMES. An interruption, Mr. Chairman. Does not this still provide for just such an incorporation?

Mr. McINTOSH. Yes. Do not understand me as objecting. I only object to those features of this bill that try to prescribe details. That, I think, is a legislative mistake, whether it is addressed to a life insurance company or as affecting a mercantile or any other company.

Mr. BIRDSALL. In other words, you think the Government should not act as a guardian for the people?

Mr. McINTOSH. Exactly. That is better expressed than I can express it.

Mr. ALEXANDER. As to the matter of life insurance, do the laws recently passed hamper the business of the companies if it is to be properly and honestly administered?

Mr. McINTOSH. You ask me that. I would like to take a vote on that here. I think all the insurance men here would say yes.

Mr. ALEXANDER. I am asking for information. I did not know anything about it.

Mr. McINTOSH. Those bills not only limit the amount of money that the companies may pay for the acquisition of new business, but they are based upon a theory that is fanciful instead of practical. They limit the amount of money that the companies may spend for taking care of their old business; and having limited the amount of money a corporation could spend, you would think they would be willing to let the corporations alone with that, or that they might be allowed to buy as much as they could get with it, would you not? That would seem to be fair. And yet, sir, they are not satisfied with limiting the amount of money the companies may spend, but they actually limit the amount of business they can get, and if this gentleman [indicating a bystander] or I during the year 1907 do more

than a certain limited amount of business, all the officers of our companies are liable to be sent to jail.

Mr. DE ARMOND. What kind of business is limited? Writing insurance?

Mr. McINTOSH. All business. For instance, my company last year, notwithstanding the conditions that you all know existed last year, did \$298,000,000 of new business. If during the year 1907—it is a question whether it is not 1906; that is, whether it does not apply to 1906—if we do to exceed \$150,000,000 of business, we are breaking that law. In other words, they have cut the possible business we may do in two. They have destroyed our organization. We are organized for the purpose of doing a \$300,000,000 business during the year, and I undertake to say that we can do it as inexpensively as any other insurance company in the world, and we can meet any requirements for expense that any company can meet; and yet, sir, the law says: “No, sir; you can not write that \$300,000,000 business. You must write only \$150,000,000.” In other words, the organization built up for that purpose must be disorganized and destroyed and reorganized on another basis.

Mr. ALEXANDER. What excuse did they give for such legislation?

Mr. McINTOSH. The excuse was that there was a “mad rush for business.” That was the expression—a popular expression; and whether we spend too much money or not, we must not buy too much with it. They not only limited the money we can spend, and limited the business we may do, but they prescribed the forms of our contracts. They tell us what contracts we may make and what we may not make, and they required us to pay dividends whether we have the money to pay them or not; and as the business of life insurance aims primarily to be safe, so as to meet liabilities, they limited the amount of money that we may keep for the purpose of being sure of continued solvency.

This New York legislation is the most monstrous system of legislation that has ever blotted the law books of any State or nation. And yet you have not heard anybody else say this, unless it has been some of the gentlemen who are here and really know about it. The editors of what are known as the best papers have spoken in laudatory tones of this legislation.

Mr. DE ARMOND. Possibly they may have been expressing the opinions of people who had taken out insurance and held policies.

Mr. McINTOSH. The people who take out insurance and hold policies, so far as I know, are not dissatisfied. I could go into that, but do not care to now.

Now, to come back to the kind of law that I think would be a model statute. First, I would have provision made for organizing insurance companies in the District of Columbia framed upon rational lines with a view to attract the organization of companies here. Do you know I think if there was such a law here there would be companies organized in the District of Columbia.

Mr. DE ARMOND. Have you not used rather a general expression?

Mr. McINTOSH. I am not pretending to use any but general expressions. I think companies would be organized here, because it is the seat of the Government. The city of Washington being the home office of a company would make it attractive abroad, and companies now are trying to do business all over the world.

Then my method of safeguarding the assured and the public would be a full, complete, and entire system of publicity. That, in my judgment, is the one great remedy for every ill that has been criticised in the management of insurance companies in the last year. I believe it would obviate ills in the future. Why? Because the insurance department of every State requires a company before it is licensed to do business in that State to file with it a statement of its business. They generally require this statement, in addition to being filed in the insurance department, to be published in one or two newspapers. The companies, anyway, publish them, whether required by law or not, in condensed form. The public does not so much get these reports; they are not so much interested in them; but this is the part of safety: They go into the hands of all companies, and whenever a company sees that your company or mine is doing business along unsafe lines, or has done something that they ought not to do, that fact, or a knowledge of that fact, in some way or other reaches the agents of those companies, and it at once reacts upon the company guilty of it, and they have got to cure it. It is the companies themselves. It is publicity and competition that are bound to cure all these ills, and you can let the details of insurance take care of themselves when you do that, just as you do in every other line of business.

Coming back now to the question of salaries. Suppose the salaries had been published where it is believed they were too high. The agents of all the companies would have known that. The insurance commissioners would have known it. The insurance commissioners undoubtedly would have made a point of it. Those salaries where they really were too high would have been compelled to come down. Now, that, with possibly such prohibitive legislation as not permitting officers or directors to be interested in investments of the companies or to be coinvestors with them—things of that kind—I think, would be a good measure. Publicity and a single law of that kind would have cured every evil that I can now think of that has been criticised in the last year.

• Mr. PARKER. What method would you have suggested so as to prevent what is called "deferred dividends?"

Mr. McINTOSH. I would not prevent deferred dividends. I have seven policies of insurance, all taken out during periods of my life when I was as rational as I ever was, and they are all on the deferred dividend plan, and I would not have any other kind.

Mr. PARKER. Would you have a separate publicity as to each ton-tine fund?

Mr. McINTOSH. No, sir.

Mr. PARKER. How, then, would the public know and how would the insurance commissioner know how much was being really held for those deferred-dividend systems, and whether there was really a separate fund or not?

Mr. McINTOSH. The statement made by my company would show that. We carry the funds ultimately divisible among the participating policy holders by way of profit as a liability apportioned to the class, so that if you will take our statement as we now have it you will find that this is carried as a liability to maturing policies in ten, fifteen, or twenty years.

Mr. PARKER. Was it the custom to do that in the various tontine policies in New York ten years ago?

Mr. McINTOSH. That has been done by us during the last ten years.

Mr. PARKER. Was it done in other companies? I understand that there was complaint that it was not known how much belonged to one class of policies and how much belonged to others.

Mr. McINTOSH. I do not know. I do not know that there would be any objection to an annual accounting or a quinquennial accounting—an accounting that would not involve too much clerical work, and therefore too much expense. That would be entirely proper.

Mr. PARKER. Has not the complaint been made that those deferred dividend policies were absolutely unaccounted for until the end of this long term, and therefore nobody knew how much he was going to get, how much was accruing, how much of surplus the company was holding subject to this liability, and how much was held otherwise?

Mr. McINTOSH. Of course that complaint has been made.

Mr. PARKER. You think publicity would remedy that?

Mr. McINTOSH. Publicity would reach that; and as to an annual accounting, I suppose a section perhaps might be framed for that purpose; but not necessarily, not as paying over, but an accounting in such a way as not to involve too much actuarial or clerical work, and therefore too expensive.

The question of expense is something that these insurance companies must figure on. You may not believe it, but they are all the time figuring on it and trying to keep it down.

Mr. DE ARMOND. Are they figuring all the time to keep expenses down?

Mr. McINTOSH. Yes; all the time.

Mr. DE ARMOND. In some instances they have not been very good figurers.

Mr. McINTOSH. I think I could convince you to the contrary if I could take you around my shop.

Mr. AMES. An interruption, Mr. Chairman. In your model code what would you think of the selected and ultimate method of values?

Mr. McINTOSH. I think the selected and ultimate method of valuation is pure nonsense. It is a purely theoretical idea. So far as regards a going concern, it has no value or merit.

Mr. DE ARMOND. You would dismiss it also as a matter of detail, would you not?

Mr. McINTOSH. As Mr. Gore said just a moment ago, it would be a matter of interest theoretically, and as a matter of bookkeeping it might be of some value or merit with a concern just starting.

Mr. DE ARMOND. As I understand your theory, all that would fall under the head of detail, and you would leave it out. In other words, you would leave it to the company.

Mr. McINTOSH. I would leave it out of legislation, surely. Of course you must value the policy in order to know that you are doing business on safe lines; but I would not value them on the select and ultimate method.

Mr. DE ARMOND. In making up a code would you include a prohibition against making contributions to political parties?

Mr. McINTOSH. Yes.

Mr. DE ARMOND. Would you require publicity on that?

Mr. McINTOSH. Yes.

Mr. DE ARMOND. Would not that be a matter of detail? If you prohibited it, would you not be legislating in regard to matters of detail?

Mr. McINTOSH. Yes; to that extent; yes. I would not dismiss all sorts of detail, of course. I would not make contributions to political parties; and yet I can conceive conditions where I would, if it were not against the law. Technically, if it is right for a railroad or a bank or a trust company or a savings bank or a merchant to contribute the money of its stockholders to a campaign to promote their business, I can not see why it would not be true also of life insurance.

Mr. DE ARMOND. That may be true, but perhaps there is a truth behind or under it, whether it is right for any corporation to do that.

Mr. STERLING. I do not think it is the same thing at all—a railroad contributing campaign funds and a life insurance company doing it.

Mr. McINTOSH. Both are contributing other people's money.

Mr. DE ARMOND. That is usually the most popular kind of contributions—contributing other people's money. [Laughter.]

Mr. McINTOSH. I would have the companies file statements of all moneys expended in promoting or opposing legislation.

Mr. DE ARMOND. Why ought there to be any money legitimately expended in opposing or promoting legislation?

Mr. McINTOSH. How can you do that without spending money? For example, I came down here at some expense. I can not pay it out of my own pocket. The company ought not to ask me to do that. Suppose I am not regularly in the company's employ; it would be more convenient, as it is often, to employ some local lawyer. That is as legitimate an expenditure as any a company could have.

Mr. DE ARMOND. That is, promoting or opposing some legislation?

Mr. McINTOSH. Yes.

Mr. DE ARMOND. According to your own theory, that would legitimize expenses for lobbying?

Mr. McINTOSH. It depends upon what you mean by lobbying.

Mr. DE ARMOND. I mean what is usually meant by lobbying.

Mr. McINTOSH. I do not know what is usually meant by it.

Mr. DE ARMOND. Then, I mean what is meant by it in New York. [Laughter.]

Mr. McINTOSH. I will say what I mean by "lobbying," and then I will discuss it. I take legitimate lobbying to mean meeting before committees to discuss legislation with them, as we are now doing, or a meeting with individual members of a legislature whom you feel you have a right to meet, and who are willing to meet with you, and giving them such light as may be of assistance to them in determining whether or not they are in favor of or opposed to the legislation. That is my idea of lobbying. It is entirely legitimate, and is the duty of any concern affected by the legislation.

Mr. DE ARMOND. However, when you went back to New York and reported to your office, you would not say you had been down here lobbying before this committee?

Mr. McINTOSH. No; I would not say that.

Mr. DE ARMOND. That would not be your definition of it, and it would not be a correct one?

Mr. McINTOSH. No; I would not say—

Mr. DE ARMOND. You would not call that "lobbying" when you went back to New York?

Mr. McINTOSH. No; I might not use that word.

Mr. DE ARMOND. When you put in your charge for this you will not put in, "For lobbying before the committee in Washington?"

Mr. McINTOSH. No, sir; I will say, "For expenses in Washington," etc.

Mr. PARKER. Have you any more points as to the model bill?

Mr. McINTOSH. No, sir; I think I have given my ideas of a model bill. They are publicity and prohibiting, perhaps, contributions to political parties; and as a part of the publicity, a statement of what had been spent in legislation or for legal expenses; perhaps generally I would have that itemized.

Mr. PARKER. You have not mentioned, however, the power of the insurance commissioner of the District to prevent companies doing business here that appeared to him to be unsound. Did you cover that?

Mr. McINTOSH. Oh, yes. The insurance commissioner should issue each year to the insurance companies that met with the requirements of his office a license for the year, which would have to be renewed when they complied with the law at the beginning of the next year; and I must say that I do not think that the insurance commissioners should be given a free hand to deal partially, if they chose to do so, with the companies.

Mr. PARKER. Do you think that the rule of publicity which you invoke should go so far as to show the exact amount of money spent on new business and the amount of premiums received?

Mr. McINTOSH. Yes, sir; I think the provision for publicity that is here is a very good one.

Mr. PARKER. The one in the Ames bill?

Mr. McINTOSH. Yes, sir.

Mr. PARKER. Do you think it is expressive? You spoke of it as being quite in detail.

Mr. McINTOSH. It is in detail; but how can you give publicity without detail? I do not see how you can help it.

Mr. PARKER. You think the details here are useful and necessary?

Mr. McINTOSH. As long as they are in the line of publicity, I think they can be managed. My people did not say to me that they could not conform to that section.

Mr. PARKER. I see that under section 9, page 11, under the fourteenth statement of returns of life insurance companies, it covers the matter I referred to—that it shall contain an accurate, concise, and complete statement—

A statement showing the rates of dividends declared upon deferred dividend policies completing their dividend periods for all plans of insurance and the precise methods by which said dividends have been calculated.

Mr. McINTOSH. That is all right. That is all to satisfy the policy holder.

Mr. PARKER. The next one is—

A statement showing any and all amounts set apart or provisionally ascertained or calculated or held awaiting apportionment upon policies with deferred

periods longer than one year for all plans of insurance and all durations, and for ages of entry as aforesaid, together with the precise statements of the methods by which the same have been provisionally or otherwise determined.

That covers the secrecy that applied before to the tontine, and it would have remedied many other abuses that are alleged against it?

Mr. McINTOSH. No; I do not agree at all with the charge that the abuses complained of grew out of the deferred dividend policy. I do not agree with that at all.

I want to add just a word as to the way in which I would get at the preparation of a code.

Mr. BIRDSALL. Just a moment, before you go to that branch of the subject. I have examined the act of the New York legislature here, and I find that you are correct as to the limitation that is placed upon the new business that may be done by your companies, and it gives rise to a suggestion with reference to the code here, whether a provision of that kind would be wise or unwise. Ascribing to the motives of the New York legislature only good intentions, I take it that this prohibition is made upon grounds of public policy, to prevent the accumulation of vast funds under the control of an insurance company or the individuals composing it; that that is the prime object for limiting the amount of business that may be done. I take it that you do not regard the accumulation of vast funds in the hands of an insurance company, or of the individuals that control it, as being at all detrimental either to the public health, morals, or general welfare?

Mr. McINTOSH. Or safety.

Mr. BIRDSALL. I can find no other reason for this provision in the New York statute except that.

Mr. DE ARMOND. Probably to cut off what is regarded as unwholesome and injurious competition—a wild scramble for business.

Mr. McINTOSH. That is something that suggested that.

Now, as to the question of accumulation of funds, you must remember that those funds are accumulated not in the form of money, for the money must be kept invested. The premiums of the company are reckoned on an interest-earning basis. If they do not earn interest on the premiums collected the companies can not meet their obligations ultimately, so that the accumulation of funds is not accumulation of money, but the accumulation of interest-bearing securities, mortgages, bonds, and so forth. Now, what difference does it make to the public whether or not \$1,000,000 or \$500,000,000 of bonds and mortgages are in our safe?

Mr. BIRDSALL. Let me suggest this—it might make a difference: Suppose your company, for instance, should hold \$50,000,000 in railroad stock, and should conclude to throw it on the market for the purpose of affecting the market. It would have the power, would it not?

Mr. McINTOSH. In the first place, we do not invest anything in stocks. I take your assumption there is that we do.

Mr. BIRDSALL. Yes; assume it.

Mr. McINTOSH. You assume in that that the officers of the company were not conserving its best interests. When you do that it does not make any difference what your laws are and what the company is, if you have bad men in charge of it they can wreck it and do harm with

it, whether it is a large or a small company. So that I do not think there is any possible menace in the amount of bonds or mortgages or other standard securities that a company may hold.

Mr. BIRDSALL. My inquiry led to the thought whether that was in the minds of the committee of the legislature in framing this provision.

Mr. McINTOSH. I would want to be excused from trying to interpret the minds of the framers of that law. [Laughter.]

Mr. DE ARMOND. Supposing that one of the things that influenced them to that was to check an injurious competition for business which led to the giving of rebates and the payment of inordinate commissions to agents to secure new business. Suppose that was the object.

Mr. McINTOSH. All right; they have already in that law limited the amount of money you could spend. Now, if you can not spend more than a certain amount of money, why should you limit the amount of business you can do with the money you had a right to spend? Why should the law limit their prosperity?

Mr. STERLING. The amount of money they can spend depends upon the amount of business they can do, does it not?

Mr. McINTOSH. No; not in this way under this bill in the way of rebating, if an agent was going to get a living.

Now, I was going to say a word as to how I would prepare such a code. As you gentlemen know, this is a very complicated and technical subject. I do not pretend to understand it myself. I have been diligent, and I have tried to. I have taken actuarial books home with me and studied them at night, and have done what I considered my duty since I have been responsible for the legal department of my company. But a man must first be educated for this business, and then must grow up with it to understand its details. When I want to understand the details of the business I go to those who have done this and find out what I want to know.

Now, I do not believe that it is practicable for a law to be passed, such as I think would be a model code, namely, one providing appropriately for the organization of corporations and for a practical and comprehensive system of publicity, without obtaining the advice of technically educated men as well as men of practical experience in the business in framing the measure. Now, I have a very high respect for the committee who, associated with Congressman Ames, have prepared the present bill. I know many of them personally, and I honor them; but I do know that they—because I know my own experience—can not be fully equipped for the technical work of framing such a law as is required; they can not be equipped with the technical knowledge necessary as well as the practical knowledge. You may have technical knowledge, but you must associate it with practical knowledge, otherwise it simply becomes like this New York legislation, a hindrance and a detriment, rather than a benefit.

Now, I believe, for instance, that if the American Actuarial Society, which is a society of very honorable distinction, to which no one is admitted unless he is thoroughly fitted both by technical training and, I think, perhaps, some experience. The requirements for admission to it are much more exacting than are the requirements for admission to the bar in any State that I know of. They require now, I am told, four years' study, during which examina-

tions are taken for admission to the American Actuarial Society. Of course the membership of such a society is not large. How large is it, Mr. Rhodes?

Mr. RHODES. Sixty.

Mr. MCINTOSH. I did not think it was so large as that.

Now, if the American Actuarial Society were invited to elect by ballot three of its members, to consult and advise with such a committee as might be agreeable to you and Congressman Ames and to the committee of insurance commissioners, I believe that the collaboration of such a body would result in as nearly a model law as could be had. But I do not believe that any model law that is at once practicable and scientific can be framed without the cooperation and advice of technically educated and practically experienced men. I am led to make this suggestion because Congressman Alexander asked the question.

Mr. BIRDSALL. I have an impression that they have already given some service to the formation of this bill.

Mr. AMES. Yes; even from its inception. We got the best advice from the Massachusetts insurance department—their actuary there.

Mr. MCINTOSH. The actuary of an insurance department would not be a practical man. He would be an educated man, but he would not be likely to be a practical man.

A BYSTANDER. The actuary is a she. [Laughter.]

Mr. MCINTOSH. If it is a lady, then she certainly would not be a practical man. [Laughter.]

That is all I have to say. I thank you, gentlemen.

Mr. AMES. I would like to ask you a question. I would like to bring out a point, Mr. Chairman, that I do not think has been sufficiently emphasized, and the witness, being the legal representative of a very large company, could probably explain better than anybody else to the committee the unnecessary burdens that a number of States put upon insurance companies through their insurance departments for the purpose of raising revenue. Now, in this bill we provide for no taxation of insurance companies other than the small fees that may be necessary to pay for examination and one thing and another. Do you [addressing Mr. McIntosh] think that would be a good feature, if it can be incorporated into the laws of the several States?

Mr. MCINTOSH. I do think so. One of the deplorable facts we have to meet is unjust and discriminating taxation. I hope the time will come when insurance companies will be willing to withdraw from States that overtax them.

Mr. STERLING. How much is that?

Mr. MCINTOSH. Let me just show you. Here is the State of Ohio. What do you suppose the State of Ohio taxes life insurance? Three per cent. Out of every \$100 of premiums that are collected in the State of Ohio the State takes \$3.

Mr. DE ARMOND. How much does the company take out of a man who pays it more than he would need to if the companies were economically managed? How much does it take from him?

Mr. MCINTOSH. That is all determined scientifically by the actuaries and is paid back to him according to his contract with it.

Mr. DE ARMOND. I know that is determined scientifically by the actuaries, but that makes it all the easier to say what per cent it is.

Mr. McINTOSH. They have a way of figuring that, and the premiums charged by the different companies are substantially the same for all kinds of policies. I believe I am right. Mr. Gore, am I not?

H. W. GORE. Yes.

Mr. McINTOSH. So that whatever it is, they have fixed their premium upon what is believed to be a scientific and safe basis. Of course, when a State takes out of that for taxes, to that measure it disturbs the calculations upon which the premium was figured, although, of course, in all premiums there is an element figured with the premium for the purpose of meeting all expenses.

Mr. DE ARMOND. You could not cite any instance just now where any company has really suffered seriously from this taxation, could you?

Mr. McINTOSH. Well, they have not bankrupted any of the companies.

Mr. DE ARMOND. No.

Mr. McINTOSH. But if any other business enterprise were taxed at the rate of 3 per cent on its gross receipts I have not any doubt but the tax of every such taxpayer would be multiplied by from 5 to 25. I got figures on that one time. I was a lawyer for some insurance companies, lobbying in the legislature of Nebraska against what I thought to be an iniquitous tax bill, and I went around to some merchants whom I knew well enough to do so and asked them for confidential statements, without using their names, for the purpose of figuring the difference between what 2 per cent on their gross collections would have been and the tax they were actually charged, and by their own figures their taxes would have been multiplied by from 3 to 33, so that the States discriminate against insurance companies in their taxes against them. That would be the result of a gross 2 per cent premium tax, such as you have in Missouri, but a 3 per cent tax 33½ per cent further.

Mr. STERLING. Do you charge a higher premium in those States?

Mr. McINTOSH. No, sir; but we are considering, so far as we are concerned, the question of keeping the policies of each State separately, so as to deduct from the policies of those States the taxes paid on the premiums there. That is a fair way in which it ought to be done. So far as my influence goes, that will be done, but I have not the say in it.

Mr. FLOWER. That would make Ohio suffer for the extra taxation, then?

Mr. McINTOSH. Yes. Under the present plan Ohio takes that excessive tax. Some other States, as they should have, have a merely nominal tax on the premium. Ohio forages on the funds ultimately payable to the insured of other States.

Mr. DE ARMOND. I understand the agent gets 40 or 50 or 75 per cent, or even more, of that first premium.

Mr. McINTOSH. That is the first premium. The average compensation of agents in our company, assuming that they give no rebates and collect all their premiums, is about \$800 a year. That is under our old system, and at the beginning of this year we reduced their commissions 10 per cent. Under this new law I do not know what the commissions will be.

Mr. DE ARMOND. Forty or 60 per cent does, I understand, go to the agent.

Mr. McINTOSH. It was 50 or 60 per cent of the first premium; but we do not give renewals.

It was said that the Northwestern came under this select and ultimate theory. The fact is, the Northwestern is in partnership with its agents, the agents having an interest in renewal premiums. We do not give renewals except on the first renewal premium in our present practice.

Mr. BIRDSALL. That would be \$66.66 a month if you went out and hired them to get this business. You have either to give it to them out of the premium or employ them direct for their service?

Mr. McINTOSH. Of course, you could pay a salary; but they would soldier on you.

Mr. ALEXANDER. You are speaking of progressive insurance. The question I ask may betray a tremendous amount of ignorance, but I will ask it. Is insurance any cheaper to the policy holder now than it was thirty years ago? In other words, can a young man now take out a policy for \$5,000 in your company at the age of 25 years—a life policy—cheaper to-day than thirty years ago?

Mr. McINTOSH. No. I do not know what the premiums were thirty years ago, but the premiums on life insurance are bound to increase rather than decrease, because the premiums are fixed upon an assumed rate of interest which it is expected the money will earn during the reckoned life of the contracts. Now, as interest rates fall, necessarily premium rates must increase, because the result of the premium and investment must equal a certain sum at a certain time, theoretically, so that there is no ground for expecting that premium rates might have diminished, and there is no reason for looking forward to a decrease of premium rates, because the tendency of interest rates is down, rather than up. The insured, however, gets more for his money now than he did thirty years ago, because of the improved and liberalized contract he receives, and in that sense insurance is cheaper now than it was then.

Mr. AMES. Another question. The committee have no knowledge, I imagine, of the way certain examiners of certain insurance departments have held up companies for their expenses. Can you give the committee any of your experiences in that respect?

Mr. McINTOSH. I am very glad to be able to say that I have had no experience in that respect. We were examined by the commissioners of five States last fall. They were in our office some five months, with a corps of examiners numbering from 15 to 30—I do not know how many—and we welcomed that examination, because the conditions that you all know about really made it very desirable. The investigation was a very thorough one. Mr. O'Brien was one of the commissioners. The commissioners were exacting. They went into every detail of our business. It cost a good deal of money, but I think it was worth all it cost. Of course I have heard of stories of companies being held up, but I am glad to say that I have had no experience, personally; and, personally, I do not expect to have any experience of that kind.

Mr. AMES. Another question, in connection with this feature of a proper code in the District, and the examination of a department whose examination should be accepted by other States: The Armstrong law requires that an examination shall be made every three

years of every insurance company doing business in the United States?

Mr. McINTOSH. Yes.

Mr. AMES. If your company had to expect an examination once in three years by every State in which you did business, it would be an impossibility physically and financially to comply with it?

Mr. McINTOSH. It would be physically impossible and financially destructive. The examination I refer to cost us about \$35,000, and it was the cheapest examination, I am advised, that has ever been made. The commissioners were businesslike and as careful of the company's money as if they had been spending their own money.

Mr. AMES. And the length of time of the examination of one company would be three or four months?

Mr. McINTOSH. Yes, and more; and it is a great inconvenience in an office—an awful nuisance.

Mr. AMES. Then it would be a distinct advantage to policy holders if one bureau's examination might be accepted by other States?

Mr. McINTOSH. A very great advantage.

Mr. ALEXANDER. Another question, entirely irrelevant and entirely through my own curiosity: Did your company suffer the loss of any policy holders growing out of this investigation in the last eight months?

Mr. McINTOSH. I can answer that. Of course, every company is losing policy holders all the time; every company has policy holders who lapse their policies; and in the last eight months we have had lapses of policies. But the percentage of lapses has been so little above the normal that it has been perfectly surprising to us, in view of what the newspapers have had to say. The policy holders as a whole seem to be well satisfied, and when it comes down to the question of those deferred dividends, we write new insurance on persons who have been settled with on the deferred dividends many times in excess of those who make one word of complaint about being disappointed with the results of their policies.

Mr. FLOWER. Does your company intend to take into court that clause of the Armstrong law that limits the amount of business that you can write in any one year?

Mr. McINTOSH. No, sir; there is not any use.

Mr. CRAIG. Mr. Chairman, can I make one additional statement?

Mr. PARKER. Yes.

Mr. CRAIG. Just before Mr. Dawson left the room I asked him if he had ever given consideration to this thought: If the Armstrong committee had recommended and the New York legislature had adopted nothing but section 97 of this code, which relates to the limitation of expenses, what the effect would have been? He said, "No;" he had not; but without any hesitation he was willing to say that it would largely, very largely, have rectified all the evils that were found to exist.

(Thereupon, at 5.10 o'clock p. m., the committee adjourned until 10 o'clock a. m. to-morrow, Wednesday, May 16, 1906.)

ments, pay taxes, or receive licenses. The matter was brought before the supreme court of the District, and the department was sustained. The case was then appealed and it is still pending.

What I am trying to impress you with is the importance of having our code either reformed or a new one enacted. There is one company whose charter I have here, that has taken advantage of the situation as it appeared and has organized with a capital of \$1—organized to do an old-line legal-reserve life insurance business on a paid-up capital of \$1. I forbade the company's doing business, and I have not heard of its doing any business; but that is the situation, and you can see how very difficult it is to administer over this department with the laws we have.

I told you at the outset that the District of Columbia insurance laws are the worst in existence, and I repeat that statement. They are peculiar to the District of Columbia. The way insurance laws are usually adopted, where merit is considered, is after they have been adopted and tested by some States, then they are readopted by other States, and where they have no insurance department the insurance interests come either under the auditor of State or the treasurer of the State, and after the interests become large and are shown to be of such importance as to require an insurance department, it is created, and with that creation the existing laws are simply transferred and the department permitted to go on without substantially any new requirements. We did not find that case here. When this department was created all of the former laws were repealed and this subchapter 5 was "sandwiched," so to speak, into the code. The insurance department was created thus, and it seems to have been the intention of the lawmakers that, at the start-off, it should be fully equipped and prepared to do as much as departments that had been in existence fifty or sixty years. That is one of the difficulties we have had to meet, and that is the principal thing that I want to indelibly impress upon you; that is, the matter of either amending the code we have now or creating an entirely new one.

The ACTING CHAIRMAN. Some law for the District is a crying necessity?

MR. DRAKE. Yes, sir; and the code should be specific. There should be distinct sections for each and every kind of the insurance business, the same as in the States. Now it is all conglomeration. If you want to find something about legal reserve insurance you can probably find it in the beneficiary section. That is the code we are now trying to administer. It is absolutely necessary that we should have some law, either the old law revised or this bill enacted into law, so that we can administer it clearly and distinctly and give justice and equity to all concerned.

Mr. Chairman, the bill before you, interpolated as it is, is the deliberate, best thought of many men throughout the States and Territories, fully competent to judge of the needs of the situation and what will be best for those needs.

It is impossible to frame an insurance code that will meet with the views of all, whether insurance men or not. Indeed, it would be difficult to frame one that would satisfy the individual views of all the members of this committee; especially after this prolonged hearing. Outside of Congress few measures have ever received the careful consideration of so many men competent to judge as has this bill.

It is believed that the bill with the new amendments proposed to this committee fully protects the interests of policy holders—which is indeed the main object of every insurance law—and is also fair and just to the insurance companies. If it is so, that is all we need and all that is required of any insurance law.

Time may disclose defects and deficiencies in this bill; then knowing what they are, we shall be in a better position to correct them.

There is another reason for the enactment of this bill as it now stands, and during the present session of Congress, too. There are few greater difficulties or hindrances in dealing with insurance by the departments than those arising from diverse and often conflicting local legislation, such as we have here, under which each company doing business must adjust its methods; not only with reference to the laws of its own State, but to those of every State and Territory in which it does business.

This bill, with its modifications and additional amendments, being the product of so many State officials, experienced and competent insurance officers, actuaries, and agents, and having the hearty approval also of so many practical insurance men, will, it is believed, if given the high authority of its enactment by Congress, be promptly enacted, with such slight changes as to make it applicable by nearly all the States, and soon by all; thus securing that uniformity of insurance legislation which is so much desired everywhere.

It is thought that any further amendments of the bill, however wise, will tend to defeat this. It is to be hoped, therefore, that this measure—thoroughly reformed and revised as it now is—may be recommended by your honorable committee to Congress, and let time and experience determine what further amendments may be necessary.

The ACTING CHAIRMAN. Mr. Henry E. Davis, of Washington, D. C., is here as counsel for some assessment companies, and we will now hear him.

STATEMENT OF HON. HENRY E. DAVIS, COUNSEL, WASHINGTON, D. C.

Mr. DAVIS. Gentlemen, I am here in behalf of certain insurance companies or associations operating in the District of Columbia known as assessment life insurance companies or associations; sick, accident, and death benefit assessment companies or associations, and sick and accident assessment companies or associations, all of which are provided for under existing law.

A bill has been introduced (H. R. 18894) proposing to amend the code of the law for the District of Columbia by striking out section 653, which provides for those companies, and making a certain substitution.

The ACTING CHAIRMAN. Please read the present section?

Mr. DAVIS. Yes, sir. Section 653 reads as follows:

Assessment companies.—Insurance companies or associates transacting the business of life insurance on the assessment plan, organized under the laws of the District of Columbia or of any State of the United States, and doing business in said District, shall not be required to comply with the provisions of the next preceding section in regard to its assets; but such assessment companies or associations shall be required, as a condition of license to do business

in said District, to file annually in the month of January with said superintendent a sworn statement setting forth that they are paying, and for the twelve months next preceding have paid, the maximum amount named in their policies or certificates of membership when and as the same become due and payable, and that one assessment upon their members is sufficient to pay the maximum amount for such certificate or policy issued, and such other information as he may require.

Such assessment companies or associations shall also furnish said superintendent evidence that they hold an emergency or surplus fund as a guaranty for the payment of future death claims when the same is required by the charter or constitution of the company or association; and any such company or association licensed to do an insurance business refusing or neglecting to furnish such certificate shall have its license to do business in the District of Columbia revoked; but the provisions of this section shall apply only to associations transacting life insurance upon the assessment plan.

The ACTING CHAIRMAN. When was that law first passed?

Mr. DAVIS. In 1887, and it was afterwards enacted into the code.

The ACTING CHAIRMAN. I would like to ask you whether you consider that a safe provision as it stands?

Mr. DAVIS. No, sir; I want it changed.

The ACTING CHAIRMAN. It is not safe for the policy holder or anybody else?

Mr. DAVIS. No, sir. The bill H. R. 18894, proposed, is to amend that section. The bill was introduced by Mr. Samuel W. Smith. It has been supplanted by H. R. 19154, also introduced by Mr. Smith, and this is the bill which the companies for whom I am speaking desire to have enacted as a substitute for section 653 of the code. There are numerous objections to the bill H. R. 18894, but in view of the turn which this hearing has taken, it is hardly necessary for me to dwell upon them.

The ACTING CHAIRMAN. I think it would be well for you to briefly refer to them because we have not heard anything about these bills.

Mr. DAVIS. Very well. The principal objection to the bill H. R. 18894 is that it sets forth a hard and fast form of policy to be issued, two forms, in fact, one of which is scarcely intelligible, and neither of which, we think, should be adopted, for the reason that if a form of policy be set by law it can not be changed, of course, except by law, and in the application of the insurance laws to companies required to issue such policies it might, and is almost certain to be, that the policy would be found inelastic and inadaptably to conditions; and, moreover, in the bill H. R. 19154 the provision is inserted that there shall always be a policy in form to be approved by the superintendent of insurance, and the Commissioners of the District of Columbia, on appeal from him, to be changed from time to time only in the manner prescribed—that is, after giving notice and hearing—so that the provision in the bill H. R. 19154 is entirely elastic and is amply protective of the policy holders' interests. It leaves with the authorities the prescription of the form of policy, and thereby avoids any possible danger of injury to the insured. That is the principal thing in the earlier bill that is corrected by the second bill.

Now, if I may discuss the bill H. R. 19154, it provides that all such companies as I am speaking of—that is, assessment life insurance companies or associations, sick and death benefit assessment companies or associations, and sick and accident assessment companies or associations—shall be incorporated before engaging in business in

the District of Columbia. That obviates one of Mr. Drake's objections, which is in the letter of the law rather than in its spirit. It is provided that they may be incorporated under subchapter 4 of chapter 18 of the code of law for the District:

Provided that every such company shall have cash assets of not less than one thousand dollars, besides the bonds to be deposited in the registry of the supreme court of the District of Columbia, as hereinafter provided; and before the articles of incorporation of any such company or association are admitted to record by the recorder of deeds, the superintendent of insurance and the clerk of the supreme court of said District shall certify to said recorder that the said company has complied with the above conditions relative to its cash assets and the deposit of bonds as hereinafter provided.

Under the law as it stands to-day in the District of Columbia the recorder of deeds is obliged to admit to record any certificate that in form complies with the requirements of the law. One question that has caused considerable friction between the department of insurance and these companies in the District of Columbia is this—whether after the incorporators have complied with the law and met all of its requirements in respect of incorporation, and have obtained the recorder's certificate of their incorporation, the superintendent of insurance has any right to demand of them that they obtain a license? In other words, it has been contended by these companies, and is still contended by them, that when incorporated under the laws of the District of Columbia that is all they have to do to entitle them to do business in the District, and that provision of the insurance law as to license has reference to outside companies coming into the District to do business.

The law says that before the articles of incorporation of any such company or association are admitted to record by the recorder of deeds, the superintendent of insurance and the clerk of the supreme court of the District shall certify to the recorder that the requirements of this act, in respect to capital stock and the deposit of bonds in the registry of the supreme court of the District of Columbia, have been complied with. That is in the direction of protection to the insured, and is a salutary provision, which these companies are perfectly willing to have enacted into law.

Mr. BIRDSALL. That is, the act of certification takes the place of the license?

Mr. DAVIS. It ought to, but we go further and submit to being licensed in this bill. The bill is a long step in the direction of removing any possible friction between the companies and the Department. The bill next provides that any insurance company—I use the term "company" as generic—hereafter transacting the business of life insurance on the assessment plan, whether incorporated here or elsewhere, shall file with the superintendent a detailed annual statement, sworn to by its president or vice-president and its secretary or assistant secretary, showing its true financial condition as of the 31st day of December next preceding.

There is in the law as it stands to-day a provision to that effect, which, in my opinion, does not apply to these companies. That also has been a cause of friction between the companies and the Department. We are willing to be put under that supervision on condition of the substitution of it for the very ambiguous provision in section 653 of the code:

Also a statement, under oath, showing that it pays the maximum amount named in its certificates or policies as the same becomes due and payable, and for the last twelve months has uniformly done so.

The code as it stands contains a provision that I confess I do not understand and never did. It says that the company must file annually with the "superintendent a sworn statement setting forth that they are paying, and for the twelve months next preceding have paid, the maximum amount named in their policies or certificates of membership when and as the same become due and payable;" and here is what I do not understand, "and that one assessment upon their members is sufficient to pay the maximum amount for such certificate or policy issued." I do not think anybody can understand that.

Mr. DE ARMOND. It should be "each."

Mr. DAVIS. I suppose so. It is impossible to have one assessment which will meet every certificate that is outstanding. The language is incomprehensible, and why should it be so? This bill provides that the company shall show that every certificate that has fallen in during the year has been met at its maximum, and the deposit of bonds in the registry of the supreme court, with the thousand dollars to its credit, should be sufficient protection.

There is also a provision that the companies shall furnish any other information not inconsistent with law that the superintendent may require. That is a very liberal provision and one that the companies, of course, are looking to the superintendent to carry out reasonably. Then, by failure of any company to make any of the aforesaid statements or reports within ten days after notice from the superintendent of insurance, its license shall be revoked and certain of its officers shall be fined or imprisoned, as the case may be.

Provided, That every insurance company whatsoever, anything contained in section six hundred and seventeen of the Code of the Law for said District to the contrary notwithstanding, shall make the reports required of insurance companies by subchapters four and five of chapter eighteen of said code and as in this section provided.

That is to say, in addition to the statements called for by this bill, these companies shall be put upon the footing of other companies in respect to making reports which the State does not now require of them. It is a long step in the direction of increasing the security of the insured with these companies, and also they are required to furnish a statement of business required by section 650, which under the existing law our companies are not required to do. Then the provision is that:

Every such assessment company or association doing a life insurance business only that issues certificates or policies to individuals for not more than one thousand dollars shall deposit in the registry of the supreme court of the District of Columbia, on or before the thirty-first day of December, nineteen hundred and six, to guarantee the payment of benefits as provided for in its certificates or policies, United States, railroad, or municipal bonds the market value of which shall at all times be as much as fifty thousand dollars; and every assessment company or association doing a life insurance business only that issues certificates or policies for more than one thousand dollars shall deposit in the registry of said court, on or before the thirty-first day of December, nineteen hundred and six, to guarantee the payment of benefits as provided for in its certificates or policies, United States, railroad, or municipal bonds the market value of which shall at all times be as much as one hundred thousand dollars.

Neither of these things is required under existing law, and Mr. Drake's objection that somebody has incorporated a company with a capital stock of \$1 may be dismissed as not affording any apprehension.

Then the bill proceeds to provide that any company or association that issues certificates or policies on the assessment plan, providing for the payment of benefits on account of sickness or accident, in addition to the amount to be paid on the death of a member—and it designates such companies and defines them—and then provides that all such companies shall deposit in the registry of the supreme court of the District of Columbia on or before a day certain to guarantee the payment of benefits as provided for in its certificates or policies, in lieu of the bonds hereinbefore required, United States, railroad, or municipal bonds, the value of which at all times shall be as much as \$10,000. The companies are not required to do that under existing law. Then the companies are limited by this act as sick, accident, and death benefit companies to the issuance of a policy for not more than \$500 on the life of any one person.

Then comes the provision to which I alluded at the outset, and it seems to me to be sufficiently comprehensive and sufficiently protective of the interests of the insured:

All companies or associations named herein doing business in the District of Columbia shall issue uniform policies or certificates, the form of which shall, before such issue, be approved by the superintendent of insurance, after a hearing to be fixed by him on notice to every assessment life insurance company or association mentioned herein, either on his motion or on application of the majority of the companies or associations interested.

That is to say, either on its own motion or on application of the majority of the companies or associations interested, he is to fix a form of policy. The form or certificate may be changed after similar notice. This is really a very important provision in the bill, and I am sure the committee upon considering it can see it is absolutely protective. In a word, it provides this, that upon the application of a majority of the companies interested or upon his own motion, the superintendent of insurance, after notice to those concerned, shall fix a form of policy which shall be the uniform form for all of these companies. He may at any time similarly change that form and thereby you have an elastic provision of law to meet experience, whereas if you adopt a hard and fast form of policy it can not be changed except by legislation.

MR. DE ARMOND. Undoubtedly you had experience in fixing that form?

MR. DAVIS. Yes, sir; and it shows how valuable it has been.

MR. DE ARMOND. I am talking about the question of putting a general form in the law, whether there is not a great deal of experience to go on now?

MR. DAVIS. Yes, sir.

MR. DE ARMOND. And whether the experience gained in the past few years would not be sufficient for the purpose?

MR. DAVIS. No, sir; the insurance department of the District of Columbia is a very young institution. I do not think Mr. Drake would object to this provision of having the right to prescribe the

form of policy and to change it from time to time as experience would suggest.

Mr. DE ARMOND. That is not the proposition, whether Mr. Drake would object; it is whether Congress should enact it or not.

Mr. DAVIS. Yes, sir. It seems to me that all experience is that unless it is complete it is not safe to follow a hard and fast form.

Mr. DE ARMOND. Is it not a fact that there are a great many forms that have been in use a great many years?

Mr. DAVIS. No, sir.

Mr. DE ARMOND. And that with reference to insurance companies there are a great many forms prescribed by law?

Mr. DAVIS. There are policy forms that have been adopted by the various States.

Mr. DE ARMOND. I am talking about the policies which have been adopted by companies, whether there are not a great many forms by which to make out a form, if we see fit to put it in the statute?

Mr. DAVIS. Indubitably; but why is it not a perfectly safe thing to leave that to the administrative department of the Government, instead of having it imposed upon the law-making power under such exigencies as always arise when you come to ask for amendments and changes? This is a much more elastic way to deal with the question, and I would submit that it is a much safer way to deal with the question, because the control of it is given absolutely to the department of insurance, considering the Commissioners of the District of Columbia and the superintendent as constituting that department, and I can not conceive that there could possibly be any danger of injury to the insured by leaving it to the department of insurance, after hearing from time to time, to adapt the form of policy to circumstances and conditions as experience reveals them.

Mr. DRAKE. The suggestion as to the standard policy, as appears in this reform bill which Mr. Davis is explaining, came from Mr. Smith, the chairman of the committee to whom the bill was first referred.

Mr. DAVIS. He has abandoned it now.

Mr. DRAKE. He requested that all the policies of the assessment companies of different kinds doing business in the District of Columbia should be submitted to the corporation counsel and a standard form adopted, and this is the product of it.

Mr. DAVIS. Mr. Smith has abandoned that and has substituted the provision that I am now talking of in place of the rigid and inelastic form in the original bill.

Mr. LITTLEFIELD. Do you contemplate conferring power on the superintendent of insurance to change the substance of the contract between the company and the policy holder?

Mr. DAVIS. Not at all. What we propose to do is this: To provide for the establishment of a uniform policy, and that that form of policy shall be in the beginning fixed by the superintendent of insurance after notice to the companies, etc. All policies of that form that are issued of course form the contract between the companies and the policy holders.

Mr. LITTLEFIELD. Precisely.

Mr. DAVIS (continuing). And if there should be found in experience anything unsatisfactory in that form the bill gives the superintendent of insurance the right to prescribe another, but only in respect to future policies.

Mr. LITTLEFIELD. Can you under the authority to prescribe the form compel the company to enter into a different kind of contract and create different rates between the company and its policy holders?

Mr. DAVIS. Only for those that come in afterwards.

Mr. LITTLEFIELD. Your proposition here puts it within the power of the superintendent of insurance to change the scheme of the assessment insurance company, if he thinks it is wise to do so. It is not simply throwing out a whereas here and putting in one there. Your idea is to give the superintendent of insurance the power to fix the form of policy and to change the contract with the policy holders?

Mr. DAVIS. I would not put it just that way.

Mr. LITTLEFIELD. That is what it comes to?

Mr. DAVIS. No, sir. What is the significance of the scheme if it does not change the contract between the company and the policy holder? The superintendent of insurance, under the supervision of the Commissioners of the District of Columbia, who, with the District Commissioners, constitutes the insurance board of the District of Columbia, will be vested with the power to prescribe the uniform policy from time to time.

Mr. LITTLEFIELD. That is, the uniform contract?

Mr. DAVIS. Yes, sir; as to all who come under it.

Mr. LITTLEFIELD. You propose to authorize him to change the form of policy from time to time. Does your proposition here contemplate vesting in the superintendent of insurance the power to say that the developments have been such in connection with the subject of insurance that from now on the companies must have another kind of contract and give a different kind of contract to the policy holder?

Mr. DAVIS. I think you rather overstate it.

Mr. LITTLEFIELD. If you could change the contract in one feature, you could change it in all. Is that the purpose? Do you propose to give the superintendent of insurance the power to judge as to what policies thereafter shall be issued and to compel the companies to make new contracts with the policy holders?

Mr. DAVIS. On the assumption that the insurance department could under this provision make a form of policy that would change the obligations of the companies, under its charter, of course, your objection is fatal to the suggestion; but the law itself fixes the relation of the company to its insured and to guarantee the meeting of its obligations upon the terms on which the company is organized.

Mr. LITTLEFIELD. That is the general proposition?

Mr. DAVIS. Yes, sir.

Mr. LITTLEFIELD. Does this proposition you have here contemplate giving the superintendent of insurance the power to say that experience has shown, for instance, that the details of the policy existing now between any assessment company and its policy holders are not such as adequately protect the rights of the policy holder and that from now on another contract must be entered into between the company and the policy holder, and if they do not see fit to enter into that contract they can not do business?

Mr. DAVIS. Practically so; that is to say, without affecting existing business at the time.

Mr. LITTLEFIELD. Of course.

Mr. DAVIS. Understand always that the provision of the bill re-

quires that the Commissioners of the District of Columbia shall approve what the superintendent of insurance does in that regard.

The ACTING CHAIRMAN. The largest deposit that is provided in the bill is \$100,000?

Mr. DAVIS. Yes, sir.

The ACTING CHAIRMAN. If a company got to doing a business of a million dollars, could the superintendent of insurance insist that they should create a larger reserve?

Mr. DAVIS. No, sir. We will assume, of course, that it is impossible for the commissioners or the department of insurance to change the legal rights and legal liabilities of the company. This provision has merely reference to the form of policy necessary to carry on the business of the company in accordance with its charter rights and its duties.

The ACTING CHAIRMAN. Do you not think the amount carried as capital or as reserve ought to be in proportion to the amount of business done?

Mr. DAVIS. That would be a very difficult thing. These companies are all small companies comparatively, and the protection that is provided by this bill is infinitely greater than that which now exists in every particular.

The ACTING CHAIRMAN. There is no protection now?

Mr. DAVIS. No, sir; nothing except the solvency of the individuals who compose the company.

Mr. LITTLEFIELD. That is not a very substantial proposition.

Mr. DAVIS. No, sir.

Mr. LITTLEFIELD. You must be very familiar with the experience of assessment companies, and I would like to ask you the question whether, in order to adequately protect the people holding policies therein, it has been necessary to accumulate a certain sum for the carrying out of the contracts?

Mr. DAVIS. That is a question that requires to be split in two. There are companies and companies. Those companies prospering which have been conducted along conservative and respectable lines have not found it necessary, and companies that are conducted otherwise would not protect anybody in any event.

Mr. LITTLEFIELD. Then, your answer would be that when assessment insurance is properly conducted there is no occasion for the accumulation of any fund for the protection of the policy holders?

Mr. DAVIS. It has not been proved necessary, but we are here to say that the provisions of this bill go very far in the direction of providing about as complete protection as these companies should offer.

Mr. LITTLEFIELD. If there is no occasion for the accumulation of any fund, what is there to guarantee the performance of the company's contracts except the solvency of the stockholders?

Mr. DAVIS. There is nothing. You asked me what had been the experience. There is nothing under existing law. We propose to change it by requiring this deposit to be made in the registry of the court.

Mr. LITTLEFIELD. Notwithstanding the fact that where a company is conservatively managed on the assessment plan experience has demonstrated that there is no occasion for the accumulation of a surplus you are willing to go further and accumulate a surplus which is really more than the Government requires?

Mr. DAVIS. Which is more than the experience of the companies has demonstrated is necessary. We have not found it necessary.

Mr. LITTLEFIELD. That, you understand, has been the general experience the country over?

Mr. DAVIS. I should say yes with representative reputable companies that have been carrying on this business.

Mr. STERLING. What advantage would there be in having this much reserve—the amount named in the bill?

Mr. DAVIS. These companies are small companies. They are issuing small policies, as you notice. They are meeting their policies by assessment—that is, not on the survivors, but they have assessments going all the time and they are keeping their funds in shape to meet their requirements. Every year, according to the scheme of this bill, each one of the companies must come forward and show that it has met the maximum on every certificate that has fallen in during the preceding year. If it does not do that it can not go on. The company that can do that should be permitted to go on, because experience shows that it has met its obligations.

The ACTING CHAIRMAN. Are they bound also to show the age of their members and whether they are all growing old at once and whether the assessments, therefore, are falling on the younger members and a fewer number, and whether they are getting new business?

Mr. DAVIS. They will be required, if this bill becomes a law, to make a general exhibit of their whole business, but as to the details of their ages, I should say no.

The ACTING CHAIRMAN. The difficulty with these companies is that the younger men drop out, and the old men stay in and stop paying the assessments.

Mr. DAVIS. That is true. I answer as before; if the company down to the 31st of December preceding shows that it has been meeting its obligations, it is reasonable to expect that it is going to continue to meet them for the next year. A deposit of \$50,000 for a company the size of one of these, or a deposit of \$100,000 where the policy is over \$1,000, has been demonstrated by experience to be more than ample protection for the insured.

Mr. STERLING. Under the provisions of this law, as I understand, you can not use the deposit to pay a policy, and that if you did you would violate the law?

Mr. DAVIS. You can, but it has to be made up again.

Mr. STERLING. When has it got to be made up again?

Mr. DAVIS. It has always to be there. There is a provision that it shall be held there as a guarantee for the performance of the conditions of the policies applicable thereto, and then there is a subsequent provision that if any company shall fail within thirty days after a final judgment or decree to meet that judgment or decree it shall cease to do business and the deposit in the court shall be taken to pay the judgment.

Mr. LITTLEFIELD. Why should it not cease the moment that it fails to pay?

Mr. DAVIS. It gives them thirty days to pay and then it does cease.

Mr. LITTLEFIELD. Thirty days after the decree?

Mr. DAVIS. Yes, sir; in which to pay the decree. That is to give them time to turn around and make the necessary arrangements.

Mr. LITTLEFIELD. Uncontested claims?

Mr. DAVIS. No, sir. They pay them outright.

Mr. LITTLEFIELD. You mean contested claims?

Mr. DAVIS. Yes, sir. If they have a claim and they can not meet it then they must cease. As Mr. Drake has said, there has been some question about the right of assessment companies to incorporate under the law as it stands here in the District of Columbia. Perhaps that never gave me any great difficulty, because while it does not say that they are required to have a capital stock it does not say that they shall not, and they have heretofore incorporated with a very small capital, sufficient for the purpose of equipping themselves and procuring stationery, etc.

Mr. LITTLEFIELD. Do the terms of the statute require capital?

Mr. DAVIS. No, sir. This bill does. In a word, section 653 of the code—I think you were not here when I read it——

Mr. LITTLEFIELD. No.

Mr. DAVIS (continuing). Section 653 contains an exceedingly insufficient, exceedingly incomplete, and very unsatisfactory provision with relation to these companies. Mr. Drake, I am sure, will second that proposition most heartily, because it has been the occasion of a great deal of friction. With reference to incorporation in the District of Columbia, it has been in the main a very satisfactory condition. These companies can be incorporated now without doubt, and if this bill becomes a law they can not do business until they do incorporate, and they can not do business until they get so much money subscribed, and they can not do business until the full deposit has been made in the registry of the court as a guaranty to the insured, and they can not do business until they get the recorder's certificate, and they can not go on and do business unless they can come on the 31st of December and say, "We have met, dollar for dollar, every certificate that has fallen in, and our deposit remains intact in the registry of the court;" and they must be able to do that every twelve months.

Mr. LITTLEFIELD. Who certifies as to their right to do business?

Mr. DAVIS. First, the superintendent of insurance; next, the clerk of the supreme court of the District of Columbia, as to the deposit of the bonds; and then the recorder of deeds.

Mr. LITTLEFIELD. The superintendent of insurance gives you the certificate that gives you the charter and organization?

Mr. DAVIS. Yes, sir; the superintendent and also the clerk of the supreme court of the District of Columbia, who is required to certify that the deposit called for has been made.

Mr. LITTLEFIELD. Can you call my attention to the lines in the bill that provide for the capital stock?

Mr. DAVIS. It is right in the first section, which provides that all assessment companies and so on shall be incorporated before engaging in business in the District of Columbia. Then it provides that they may be incorporated under provisions of the code, provided that every such company shall have cash assets of not less than \$1,000, besides the bonds to be deposited in the registry of the supreme court of the District of Columbia, and before the articles of incorporation of any such company or association are admitted to record by the recorder of deeds, the superintendent of insurance, and the clerk of the supreme court of the District of Columbia shall

certify to said recorder that the said company has complied with the above conditions relative to its cash assets and the deposit of bonds as hereafter provided.

Mr. LITTLEFIELD. How do they get the assets?

Mr. DAVIS. They pay them.

Mr. LITTLEFIELD. Who pays them?

Mr. DAVIS. The subscribers, the incorporators.

Mr. LITTLEFIELD. The incorporators have an interest in this outside of the policy holders?

Mr. DAVIS. That is exactly the difficulty that exists under the old law. They incorporate for the purpose of getting the body and the name. There could not be a corporation otherwise, and they fix the capital stock at \$1,000 or so, to be paid in by the incorporators. That becomes, of course, the cash assets of the concern unless it is spent in furniture, equipment, and stationery in order to get started.

Mr. LITTLEFIELD. They are the company?

Mr. DAVIS. Yes, sir; they are the company so far as the management of it is concerned.

Mr. LITTLEFIELD. Do the policy holders thereafter have any interest in the management of the company or join in with the stockholders?

Mr. DAVIS. It depends upon the charter of incorporation.

Mr. LITTLEFIELD. Under this plan?

Mr. DAVIS. No, sir.

Mr. LITTLEFIELD. You can arrange it just as you like. How many incorporators do you have?

Mr. DAVIS. Not less than three or more than fifteen.

Mr. LITTLEFIELD. Not less than three nor more than fifteen men can go on and have entire control of the company, elect the officers, fix the salaries, arrange the business and manage all the details, prescribe the forms of contract, and all the policy holders do is simply to be in a position to be assessed and to get protection from the company, but the form of contract is arranged by the incorporators or stockholders, the business is looked after by the incorporators or stockholders, and the salaries are fixed by the incorporators or stockholders. They collect the assessments and disburse the assessments in accordance with the policies?

Mr. DAVIS. Theoretically, yes; practically, almost. In the administration of these companies it is absolutely necessary to have incorporators. You therefore can not dispense with the incorporators.

Mr. LITTLEFIELD. You can incorporate a mutual company?

Mr. DAVIS. No, sir.

Mr. LITTLEFIELD. Do you mean to say there is any legal difficulty in the way of incorporating a mutual company?

Mr. DAVIS. In the District of Columbia?

Mr. LITTLEFIELD. Anywhere, under proper laws.

Mr. DAVIS. In the District of Columbia there is no law under which a mutual company can be incorporated.

Mr. LITTLEFIELD. Do you mean to say that there is any legal difficulty when the law authorizes it?

Mr. DAVIS. No, sir.

Mr. LITTLEFIELD. You are predicating your remarks on the law as it now stands?

Mr. DAVIS. Yes, sir; exclusively. If you desire, it is easy enough to write into this bill a provision as to the relation of the insured to the company after they get in.

Mr. LITTLEFIELD. Which do you think is the best way?

Mr. DAVIS. To leave it the way it is.

Mr. LITTLEFIELD. Which is wisest and safest for the public, to have these companies insuring on the assessment plan to be organized by the policy holders, which does not require capital stock, or is it a better plan to have the assessment companies controlled by not exceeding fifteen stockholders, who have entire control of the company?

Mr. DAVIS. Judging by my own experience, I should say the latter.

Mr. LITTLEFIELD. Stock companies with a thousand dollars more or less capital stock?

Mr. DAVIS. Yes, sir; which amounts to nothing except to get started, because the real protection outside of the assessment is in the deposit required to be made.

Mr. LITTLEFIELD. Practically all the capital stock is exhausted in getting the company under way, and there is no individual liability on the part of the incorporators?

Mr. DAVIS. No, sir.

Mr. LITTLEFIELD. The only possible responsibility that a small corporation with practically a nominal capital doing business on the assessment plan would have under these circumstances to the policy holder would be the ability of the corporation to meet its liabilities?

Mr. DAVIS. Or fall back on its deposit in the clerk's office, which, experience has shown, will be ample, because, as I have already said, these companies can only live from year to year by absolute and strict compliance with the law, and it is beyond the bounds of credulity that one of these companies operating on the scale upon which they have been operating here can collapse within a year without leaving the deposit perfectly sufficient and ample to meet all of its liabilities.

Mr. LITTLEFIELD. When one of these companies collapses it collapses within a year, and sometimes within a month, and sometimes within a shorter time, and even if they have paid the liabilities up to the end of one year it is difficult to tell whether by reason of that fact they will be sure to pay them up to the next December.

Mr. DAVIS. But nobody can foretell that. What I am saying is that experience has demonstrated that the call of this bill for the deposit is ample protection, and any other would be actually prohibitory upon these companies to do business.

Mr. LITTLEFIELD. What has been the experience of assessment companies during the last ten or fifteen years in the United States with reference to their ability to carry on their business and adequately take care of their policy holders? Do not take the conservative companies, but take them all.

Mr. DAVIS. I submit that there are gentlemen here who are better qualified to answer that question than I am.

Mr. LITTLEFIELD. The Knights of Honor have had a very serious controversy as to whether the men who have been policy holders for years should stand an arbitrary increase of their assessment, sometimes three or four times the original assessment, and it has brought about a great deal of trouble. It was done very largely because of the fact that as the ages of the men have increased the liability has increased, and they have not been able to take in a sufficient amount of

new blood to take care of the situation. Would you be apt to run into such a situation?

Mr. DAVIS. Judging from experience here, I should say no.

Mr. LITTLEFIELD. You are familiar with that situation?

Mr. DAVIS. Yes, sir. The Royal Arcanum is just going through the same thing. I am not prepared to say that it would not be the part of wisdom, so far as the legislator is concerned, to put some restrictions upon these companies so that they should not be at liberty to change the contracts with the policy holders after they had come in. I realize that unless there is some provision in the law to that effect, that under their articles of incorporation, the by-laws and opportunities, some of these companies might change the assessment from time to time due to the very fact that you speak of. Going by our own experience here, we had a company that everybody thought was a very prosperous and conservative concern that died out because there were not enough people in it to take care of it. That is always the difficulty.

Mr. LITTLEFIELD. What is your company, by the way?

Mr. DAVIS. I am speaking for some four companies, all alike.

Mr. LITTLEFIELD. Here in the District?

Mr. DAVIS. Yes, sir.

Mr. LITTLEFIELD. They all have horizontal assessments?

Mr. DAVIS. Yes, sir.

Mr. LITTLEFIELD. How old a man do you take in your company?

Mr. DAVIS. Sixty years of age.

Mr. LITTLEFIELD. You do have an increased assessment?

Mr. DAVIS. Yes, sir. I find after consultation with a representative of the companies that I have been talking at cross purposes with you. A man pays according to the rate at which he comes in.

Mr. LITTLEFIELD. Then you have an assessment at one rate for a man 20 years of age and another rate for a man 25 years of age, and so on?

Mr. DAVIS. Yes, sir.

The ACTING CHAIRMAN. It does not raise after the first year?

Mr. DAVIS. No, sir.

The ACTING CHAIRMAN. You do not put by any reserve for his contract as he grows older?

Mr. DAVIS. Well, I do not know that I could say "yes" or "no" to that question. It depends upon the administration of the company. With conservative management a company like this might easily enough provide for a reserve without great concern.

Mr. LITTLEFIELD. Your theory is that assessment insurance pays exactly what it costs and no more, which eliminates the reserve?

Mr. DAVIS. That is the idea.

The ACTING CHAIRMAN. Section 56 of the bill says:

That no life insurance company which issues any contract the performance of which is contingent upon the payment of assessments made upon survivors shall do business within the District of Columbia.

And the proposed amendment adds:

Except those companies or associations now authorized to do business in said District and which shall have and maintain a reserve fund on their assessment policies or certificates equal to the net value of such policies or certificates valued as one-year term policies, as provided in section 10 hereof.

Mr. DAVIS. That is entirely satisfactory to us.

Mr. BIRDSALL. Will the same necessity exist if this legislation is enacted?

Mr. DAVIS. Yes, sir. Section 56, which Mr. Parker read, is a prohibition upon certain companies doing business here at all, and the amendment that he has read excepts from that prohibition a certain class of companies. If the Ames bill passes as it is, the class of companies that are mentioned in section 56 will have to quit doing business.

Mr. LITTLEFIELD. That prevents the organization of companies?

Mr. DAVIS. Yes, sir.

Mr. LITTLEFIELD (continuing). That pay only by assessment on survivors?

Mr. DAVIS. That is right.

Mr. LITTLEFIELD. How long have your companies been running?

Mr. DAVIS. Ever since the law was passed in 1887.

Mr. LITTLEFIELD. How much insurance do you carry?

Mr. DAVIS. Roughly speaking, we have liabilities of \$4,000,000 in the aggregate. That is about right.

Mr. STERLING. How are the incorporators recompensed for this \$100,000 which it is proposed to deposit?

Mr. DAVIS. That is a matter of administration that this bill does not touch somehow. My attention was attracted to that. The bill is silent about it. You see the incorporators have got to raise this amount before they start.

Mr. STERLING. It is intended that that provision shall apply to companies already doing business here?

Mr. DAVIS. Yes, sir; otherwise they can not proceed.

Mr. LITTLEFIELD. I would like to ask what the ultimate effect on the policy holder would be?

Mr. DAVIS. The money is deposited in the supreme court of the District of Columbia, and there it stays. No man can get it out except the policy holder.

Mr. LITTLEFIELD. The company has to raise it—that is, the 3 to 15 stockholders have to put in a thousand dollars?

Mr. DAVIS. Yes, sir; in cash.

Mr. LITTLEFIELD. And they deposit another hundred thousand dollars?

Mr. DAVIS. Yes, sir; in bonds.

Mr. LITTLEFIELD. That does not make any difference. Somebody has got to put up the cash somewhere, and in order for the company to get the bonds it must have the cash. How does it get it—from the stockholders?

Mr. DAVIS. Yes, sir; it could not get it anywhere else.

Mr. LITTLEFIELD. According to this plan that you have here or that you contemplate, does the company raise this \$100,000 deposit from its stockholders or its incorporators, which is the same thing?

Mr. DAVIS. It does; yes, sir.

Mr. LITTLEFIELD. Then the company owes the stockholders for that deposit?

Mr. DAVIS. No, sir.

Mr. LITTLEFIELD. Would not the company owe the stockholders for the hire of the money from the stockholders?

Mr. DAVIS. Yes, sir.

Mr. LITTLEFIELD. And the stockholders would have the first charge against the company on the basis of the \$100,000?

Mr. DAVIS. No, sir; because the law subordinates their claim by devoting it first to the payment of these claims.

Mr. LITTLEFIELD. The stockholders pay \$100,000, and let the company have it and deposit it so that it becomes a trust fund for the benefit of the policy holders?

Mr. DAVIS. Yes, sir.

Mr. LITTLEFIELD. And that subordinates their claim?

Mr. DAVIS. Yes, sir. These are interest-bearing securities, and these men are only making an investment. They are not taking money out of their pockets and paying money outright, but they are lending their own investment.

Mr. STERLING. Suppose a company is required to draw \$50,000, then they would have to put up \$50,000 more?

Mr. DAVIS. Yes, sir.

Mr. STERLING. That does not draw interest?

Mr. DAVIS. That is loss.

The ACTING CHAIRMAN. What compensation do the stockholders get?

Mr. DAVIS. Only the interest on the investment they make.

Mr. STERLING. Who elects the officers?

Mr. DAVIS. You can not have these companies run except as joint-stock companies unless you provide somewhere for the organization of mutual companies in the District of Columbia, for which there is now no provision. From the necessity of the situation the men who are the company must elect the officers.

Mr. LITTLEFIELD. That is, the stockholders?

Mr. DAVIS. Yes, sir. The recent developments have made it manifest to everybody that this business of the participation of the policy holders in elections is about the hollowest performance conceivable. While there may be a reaction for a few years, after a while the old conditions will be restored. It is as certain as the sun shines. With the indifference of the policy holders growing more and more and the officials interested in perpetuating themselves in office you will find that they will be going on as before. There has never been any friction between the insurance department and the officials of the companies here.

Now, let me call your attention to section 1 of the Ames bill. This bill does not deal with the class of companies I am talking about, and I would suggest, in order to remove any room for misunderstanding, that after the first section there should be added:

And except assessment life insurance companies or associations, sick, accident, and death-benefit assessment companies or associations, and sick and accident assessment companies or associations now existing and carrying on business in the District of Columbia.

Mr. GILLET. Would that not exclude any company hereafter incorporated? These companies doing business here would have an advantage over the companies coming hereafter?

Mr. DAVIS. I do not care so much about the words.

Mr. GILLET. Why not have a separate law for that?

Mr. DAVIS. There is no objection to that. We do not want to go out of business.

Mr. STERLING. It is your idea that the bill H. R. 19154 be incorporated in the Ames bill?

Mr. DAVIS. That was Mr. Parker's suggestion.

In 1887, when this assessment law was passed, we had not a code or department of insurance, and there was a certain provision that had to do exclusively with a certain class of insurance—the fraternal benefit associations—and the act in itself said that those companies should be subject only to the provisions of this law and of no other law in the United States relating to insurance in the District of Columbia. When the framers of the code got together they took the bill that had been drafted for the creation of a department of insurance, and they thought that they would cover the whole business of insurance in a large chapter dealing on that subject. So they took the earlier law and put it right down in a chapter by itself and tried to say that these associations should be governed by the provisions of that chapter entirely and by no other law.

The courts got at it, and they read the whole thing together, with the result that the will of Congress has been absolutely defeated by subjecting these companies to the operation of certain provisions in the general insurance law from which in the beginning it was announced that they should be exempted, and from which the codifiers attempted to say they should be exempt. My idea would be to leave it out of the Ames bill and let it stand in a little code by itself, and then there can not be any possible confusion about it. As it is now, some of the companies have gone along on the supposition that they were subject to certain sections of the code, and the insurance department has attempted to administer their affairs as subject to different sections, and the case in which the test has been made is now pending in the court of appeals. It is a very simple thing to confuse a provision by putting it in juxtaposition with some other one, but it is very simple if you leave it separate so that it can be construed. Speaking for myself, I think it would be the part of wisdom to enact this in a separate bill.

Mr. LITTLEFIELD. Do your companies do industrial insurance?

Mr. DAVIS. Yes, sir.

Mr. LITTLEFIELD. Do you approve of it?

Mr. DAVIS. I am not sufficiently familiar with it to express an opinion. I have never followed that branch of the subject. The representatives of the companies are here.

Mr. STERLING. I understand you appear here as the attorney for these companies?

Mr. DAVIS. Not at all. I was asked to come here and endeavor to show the result of these gentlemen's experience in the direction of a proper and efficient amendment.

Mr. LITTLEFIELD. They are clients of yours?

Mr. DAVIS. Yes, sir.

Mr. LITTLEFIELD. And you advise them in connection with their affairs and represent them here as their attorney?

Mr. DAVIS. Yes, sir; I have been their counsel for a number of years, and I appear in that capacity.

Mr. DRAKE. The companies that Mr. Davis speaks for are strictly industrial; I understand they do nothing else.

Mr. LITTLEFIELD. I will ask you whether you think industrial insurance is wise or unwise?

Mr. DRAKE. I think it is wise; I am in favor of it.

STATEMENT OF HON. M. G. BULKELEY, PRESIDENT ÆTNA LIFE INSURANCE COMPANY, HARTFORD, CONN.

Mr. BULKELEY. Mr. Chairman and gentlemen of the committee, I trust you will recognize me here not as a Member of Congress, but as a representative to some extent of the insurance interests of my State and of a company of which I have been president for some twenty-five years.

Mr. LITTLEFIELD. Which company is that?

Mr. BULKELEY. The Ætina Life Insurance Company, and I have authority by letter to appear practically for all the companies that have not been represented here, letters from their presidents in regard to the proposed bill.

• Mr. LITTLEFIELD. You have devoted your whole life to insurance?

Mr. BULKELEY. I have been brought up in that atmosphere since 1846, which was the time of the inception of life insurance business in Connecticut.

What I desire to say at the outset is not, perhaps, directly connected with the Ames bill, which is before you for consideration, but to statements which I listened to yesterday morning by one of the gentlemen who addressed the committee and which I have seen quoted in the New York and Washington papers. It seems to me that they should not be allowed to go forth to the country without being challenged. The statements were so inaccurate—I think not designedly—that the committee should have the benefit, if I can give it to them, of what I claim to be a correct statement of the matters to which I refer.

I listened to the distinguished actuary who was connected with the Armstrong committee in his comments on the insurance departments of the country, and I had sent to me this morning somewhat similar comments by a distinguished attorney who addressed this committee some time ago on the subject of the Federal supervision of insurance, Mr. Breckenridge, of Omaha, and, if you will permit me, I would like to read what he says, which is so much in accord with the statements made by Mr. Dawson yesterday that they seem to be in practical agreement.

This is an address delivered before the students of the Omaha University by Mr. Breckenridge. Referring to the insurance scandals, Mr. Breckenridge said:

Officials of the various States by their blackmail and schemes to extort money from the companies, have stolen more from the 20,000,000 policy holders of this country than the corrupt officers of the country themselves. It is safe to assert that no State department of insurance has called the attention of the people to any company that has met all their demands for money. The truth is that some of these State insurance departments are sinecures, mere collection agencies, and that they offer the most seductive opportunity for fraud and graft that exists in this country.

For a reputable attorney to make a statement of that kind against the administrative bodies of 45 States, to my mind, as an insurance underwriter, as president of a life company for twenty-five years, and connected with fire interests of my own State, which are very large, is absolutely unwarranted and untrue. It is true that more than half the departments of the 45 States have no companies, except possibly small local ones under their immediate charge.

Mr. LITTLEFIELD. You mean domestic companies?

Mr. BULKELEY. Yes, sir; their own State companies. Not more than half the States; they have either none at all or they are of small local character. They are not engaged in the large agency business of the country.

The trouble with the departments is of an administrative character, and very few, if any, insurance commissioners in the country are responsible for legislation. It is just such legislation as is contained in some of the provisions of the bill which you have before you and which have been enacted into law in various States, and which the insurance commissioners are compelled to administer that call for all the criticisms of late years, especially by the companies. As a general thing, and I might say almost universally—I should not hesitate to say universally—we have at the head of our departments to-day, and have had for twenty years or more, men of high character and men who have administered the duties of their offices in accordance with their interpretation of the laws that have been enacted for their guidance, and, speaking for the companies of my own State, I want to state that I think it is the experience of the New England companies generally that we have had no fault to find during the last twenty-five years with the administration of the laws which insurance commissioners of the various States of the country have been compelled to administer.

We have fault to find and do find fault with the varied legislation of the different States. It is largely on matters of taxation. It is largely on matters of taxation that the differences between the companies and the commissioners arise and the enforcement of the laws which they are obliged to enforce if they hold the office honestly. I want to say that it may go as broadcast as the statement of Mr. Dawson that I think as a whole the commissioners of the various States have the confidence of the men engaged in the business, and the faults we have to find are with the laws more than with their administration. They naturally go together, and the men who enforce the laws get the blame; but the only way, as was said long ago by a very wise man, to secure the repeal of a bad law was to enforce it. So we do not find, as insurance men, great fault with the enforcement of the laws as we find them enacted in the various States. That much I want to say for the benefit of the business and the departments with whom we are constantly engaged.

If you will pardon me, I read in a New York paper, under a headline from Washington, May 15:

Miles M. Dawson startles House committee by statement relating to San Francisco losses.

Washington, May 15. "There is not a fire insurance company in this country that knows whether it will be solvent or not when it pays its San Francisco losses." This statement coming from Miles M. Dawson, actuary for the Armstrong committee of New York, startled the House Committee on the Judiciary to-day.

I am not prepared to say whether that is true or not.

Mr. Dawson was discussing the question of the model insurance regulation act for the District of Columbia.

And he went on to say:

The result of the Chicago fire was to put most all of the American companies out of business, while not one of the British companies failed, notwithstanding they paid every loss they had in that conflagration. Since that time the British companies

had been constantly increasing their business. This was not because the English companies had any more money, nor were any better insurance men, but because the laws of this country required American companies to hold a reserve fund amounting to 50 per cent of their capital. The reserve of the British companies was only 30 per cent. This allowed these companies a larger capital to meet such a loss as was occasioned in Chicago.

The lesson should have been learned then that it was not a large legal reserve that made a company solvent. American companies which could not get into their 50 per cent reserve went into the hands of receivers.

I find a similar article in the Washington Post of this morning, headed—

FRISCO FIRE A BLOW—EXPERT FEARS FOR SAFETY OF INSURANCE COMPANIES.

The significant statement was made in the course of a discussion of the Ames insurance bill yesterday that "not a fire insurance company in this country knows whether it will be solvent or not when it pays its San Francisco losses."

That is the substance of the article. I want to say to the committee and to the country, if you will permit me, that there is not a fire insurance company in America to-day that does not know whether it is solvent or not when its San Francisco losses are paid. If the statements of the New York and Connecticut departments can be relied upon, as I think they both can, and from my own personal knowledge of the different companies with which I am connected directly or indirectly, there are but two or three of the fire insurance companies that can not pay their losses out of their surplus, leaving their capital and a large surplus behind them, so that they can go on and continue their business.

And I want to say for one of the companies of my own city that while its losses in San Francisco will consume a large part of its capital and surplus, its stockholders have already contributed a new capital and surplus of \$4,000,000 and the company will go on solvent under the regulation of a 50 per cent reserve, with from \$18,000,000 to \$20,000,000 of assets after its San Francisco losses are paid, and the only other company of large size that is in that condition, the only company in the United States, so far as I am able to study the tables, is a company in Chicago that I understand has followed the suit of the company I referred to in my own State.

If the committee will take the time at their leisure to examine and make a comparison between the foreign and American companies, and see the conditions which prevail with the large, almost unexampled losses which they sustained in San Francisco—the business of many of them was confined to the Pacific coast—you will find that they have met the situation as underwriters always do, and that where the funds in the hands of their American representatives have failed to be equal to the emergency that they have replenished from their foreign exchequers ample amounts for all the companies, and have met the large liabilities in San Francisco, amounting to between forty and fifty millions of dollars, with the utmost alacrity.

Mr. LITTLEFIELD. How long has the information you are quoting from been published?

Mr. BULKELEY. I have seen it alluded to before. This is a paper of May 15, yesterday, published in Connecticut. This statement shows that the capital of the companies of New York State and the other States and foreign countries amounts to \$82,000,000; their net surplus on the 1st of January was \$112,000,000; their surplus to

policy holders was \$208,000,000, and the San Francisco losses amount to \$113,000,000. That takes in all the companies interested in the San Francisco fire.

The gentlemen made a comparison with the Chicago disaster. I want to say that the situation is absolutely different. These companies in thirty years have grown from puny institutions, comparatively, to institutions of great magnitude and strength under the prevailing laws and systems which have been inaugurated through the wisdom of years of experience in insurance in this country, and I do not believe that you can get fire-insurance men anywhere to ask for one moment to have the system of reserve changed.

The statement referred to by Mr. Bulkeley follows:

Fire losses at San Francisco—Total is \$113,441,595 for all companies, as now computed—Tables by New York insurance commissioner—Standing of Hartford companies as to surplus, according to rule in this State.

The insurance commissioner of New York made public some very interesting figures yesterday, giving the results of his inquiry among the fire companies as to their losses at San Francisco. The tables which he gave out for publication show the capital, surplus to policy holders, and net to stockholders (the difference being the capital), and the estimated losses. The New York rule for ascertaining the surplus makes it less than it is by the rules of other States, and to that extent the companies do not show up their full strength. The result of the New York tabulations indicates that the New York State companies lose about \$18,944,000 by the disaster, the companies of other States lose about \$44,827,499, and the foreign companies about \$49,670,096, a total of \$113,441,595.

The Hartford companies appear in the long list accompanying this article with the surpluses as scheduled by the New York regulation, but the following table in which they are grouped gives their standing under the Connecticut rule; it gives the losses as they have been reported to the New York authorities, and these were confirmed yesterday by inquiries by Courant reporters.

	Assets.	Surplus (including capitaliza- tion).	Estimated Losses.
<i>Ætna</i>	\$16,815,297	\$11,036,011	\$2,700,000
Connecticut.....	5,813,619	2,729,173	1,775,000
Hartford.....	18,061,927	6,400,696	5,750,000
National.....	7,304,869	3,314,305	1,740,591
Orient.....	2,416,979	1,297,529	700,000
Phoenix.....	8,140,630	4,382,270	1,600,000
Scottish Union and National	58,553,411	29,159,984	14,265,591
	5,379,583	3,338,058	1,250,000
	63,932,994	32,498,042	15,515,591

It is to be borne in mind that the Hartford has added \$3,750,000 to its assets and the same amount to its gross surplus, which includes capital. The conclusion of the statement, as far as this city is concerned, is that something over \$15,000,000 will probably be paid by local companies to reimburse San Francisco, and that this gigantic sum is not a quarter of the assets of the companies of this city, nor a half of their combined surplus as to policy holders.

Following is the New York table in full:

NEW YORK STATE COMPANIES.

	Capital on Dec. 31, 1905.	Net surplus on Dec. 31, 1905.	Surplus to policy hold- ers Dec. 31, 1905.	Estimated net loss in California conflagra- tions.
Agricultural	\$500,000	\$857,261.55	\$1,357,261.55	\$750,000
Insurance Company of America ^a	400,000	223,504.39	623,504.39	250,000
British American	200,000	118,726.87	318,726.87	75,000
Buffalo German	200,000	1,634,627.36	1,634,627.36	200,000
Caledonian American	200,000	91,777.63	291,777.63	50,000
Colonial Assurance	200,000	130,254.77	330,254.77	15,000
Commercial Union Fire	200,000	130,124.02	330,124.02	110,000
Commonwealth	500,000	504,977.23	1,004,977.23	39,000
Continental	1,000,000	8,424,225.13	9,424,225.13	1,900,000
Dutchess ^b	200,000	175,519.48	375,519.48	175,000
Eagle Fire Co. ^c	300,000	376,072.32	676,072.32	300,000
Empire City Fire	200,000	88,345.43	288,345.43	40,000
German Alliance	400,000	629,131.54	1,029,131.54	225,000
German American	1,500,000	6,442,674.78	7,942,674.78	2,000,000
Germania Fire	1,000,000	2,889,680.92	3,889,680.92	1,690,000
Glenn Falls	200,000	2,594,064.99	2,794,064.99	1,000,000
Globe & Rutgers Fire	400,000	1,256,146.92	1,656,146.92	450,000
Hanover Fire	1,000,000	925,515.83	1,925,515.83	700,000
Home	3,000,000	8,720,501.34	11,720,501.34	1,500,000
Indemnity Fire	200,000	94,785.53	294,785.53	85,000
Nassau Fire	200,000	248,857.52	448,857.52	150,000
New York Fire ^d	200,000	61,682.08	261,682.08	200,000
Niagara Fire ^e	500,000	1,810,411.59	2,310,411.59	1,000,000
North British and Mercantile	200,000	496,026.22	696,026.22	12,500
Northern	350,000	100,995.67	450,995.67	2,500
North German Fire	200,000	90,156.63	290,156.63	160,000
North River	350,000	440,894.93	790,894.93	325,000
Pacific Fire	200,000	168,791.92	368,791.92	30,000
Pelican Assurance ^f	200,000	119,802.72	319,802.72	250,000
Peter Cooper Fire	150,000	81,906.25	231,906.25	40,000
Phenix	1,000,000	2,236,779.19	3,236,779.19	1,750,000
Queen Insurance Company of America	1,000,000	2,722,650.53	3,722,650.53	1,500,000
Rochester German	200,000	489,659.28	689,659.28	400,000
Stuyvesant	200,000	152,111.62	352,111.62	70,000
United States Fire ^g	250,000	60,329.75	310,329.75	100,000
Victoria Fire	200,000	69,773.65	269,773.65	50,000
Westchester Fire	300,000	1,678,127.88	1,978,127.88	600,000
Williamsburgh City Fire	250,000	1,492,093.03	1,742,093.03	750,000
Total	19,550,000	50,141,946.41	69,691,946.44	18,944,050

^a At a meeting of the directors held on May 5 it was resolved to make good any impairment.

^b Company states that any impairment of capital will be made good by directors.

^c Stockholders will make good any impairment of funds.

^d Reinsured in New Hampshire Fire on May 4 and suspended business.

^e Will increase resources \$1,000,000 as soon as statutory requirements can be complied with.

^f Company advises that stockholders will make good any impairment.

^g Reinsured outstanding risks in Westchester Fire and ceased writing business.

OTHER STATE COMPANIES.

Aetna, Connecticut	\$4,000,000	\$6,862,984.38	\$10,862,984.38	\$2,700,000
Alliance, Pennsylvania	500,000	457,768.20	957,768.20	500,000
American, Massachusetts ^a	300,000	89,608.39	389,608.39	400,000
American, New Jersey	600,000	2,430,459.41	3,030,459.41	1,000,000
American Central, Missouri	1,000,000	1,431,518.06	2,431,518.06	500,000
American Fire, Pennsylvania ^b	500,000	253,890.94	753,890.94	500,000
Atlanta-Birmingham Fire, Alabama ^c	250,000	43,948.58	293,948.58	100,000
Calumet, Illinois ^d	200,000	251,132.80	451,132.80	600,000
Camden Fire Association, New Jersey	400,000	516,340.14	916,340.14	400,000
Citizens, Missouri	200,000	190,220.50	390,220.50	158,000
Colonial Fire, District of Columbia ^e	200,000	33,733.44	233,733.44	100,000
Columbia, New Jersey	400,000	9,365.91	499,365.91	7,221
Concordia Fire, Wisconsin	200,000	194,845.29	394,845.29	200,000
Connecticut Fire, Connecticut	1,000,000	1,693,972.70	2,693,972.70	1,775,000
Delaware, Pennsylvania	702,875	200,871.23	903,746.23	402,000
Eastern Fire, New Jersey	200,000	121,380.38	321,380.38	60,000

^a Ceased writing business in New York April 27, 1906.

^b Reinsured in Commercial Union Assurance of England.

^c Company states that arrangements are being made to make good any impairment of funds.

^d At meeting of directors April 26 extra funds were provided to pay California losses. Assets will be unimpaired.

^e Meeting of directors called for May 21, when proper action will be taken to meet emergency caused by California disaster.

OTHER STATE COMPANIES—Continued.

	Capital on Dec. 31, 1905.	Net surplus on Dec. 31, 1905.	Surplus to policy hold- ers Dec. 31, 1905.	Estimated net loss in California conflagra- tions.
Equitable Fire and Marine, Rhode Island ^a	\$400,000	\$238,591.01	\$638,591.01	\$250,000
Fire Association of Philadelphia, Pennsylvania	500,000	1,513,102.71	2,013,102.71	1,200,000
Federal, New Jersey ^b	500,000	856,184.69	1,356,184.69	600,000
Fireman's Fund, California ^c	1,400,000	2,070,523.49	3,070,523.49	2,800,000
Franklin Fire, Pennsylvania	400,000	996,672.18	1,396,672.18	800,000
German National, Illinois	200,000	154,347.80	1,354,347.80	150,000
German of Freeport, Illinois ^d	200,000	1,952,065.24	2,152,065.24	1,582,716
German Fire, Illinois	200,000	126,444.47	826,444.47	100,000
Girard Fire and Marine, Pennsylvania	300,000	697,863.61	997,863.61	450,000
Hartford Fire, Connecticut ^e	1,250,000	5,124,820.29	6,374,820.29	5,750,000
Home Fire and Marine, California ^f	300,000	500,080.99	800,080.99	1,200,000
Indianapolis Fire, Indiana	200,000	98,632.51	298,632.51	25,000
Insurance Co. of North America, Pennsylvania	3,000,000	3,847,236.97	6,487,236.97	2,000,000
Insurance Co. State of Pennsylvania, Pennsylv- ania	200,000	84,170.29	284,170.29	8,250
Mercantile Fire and Marine, Massachusetts ^g	400,000	68,281.21	468,281.21	310,000
Michigan Fire and Marine, Michigan	400,000	282,687.02	682,687.02	250,000
Milwaukee Fire, Wisconsin ^h	200,000	155,284.69	355,284.69	170,000
Milwaukee Mechanics, Wisconsin ⁱ	200,000	1,357,209.98	1,557,209.98	1,296,000
National Fire, Connecticut	1,000,000	2,180,980.58	3,180,980.58	1,740,591
National Union Fire, Pennsylvania ^j	750,000	298,940.45	1,048,940.45	1,000,000
New Brunswick Fire, New Jersey ^k	200,000	44,522.05	244,522.05	50,000
New Hampshire Fire, New Hampshire	1,000,000	1,237,647.54	2,237,647.54	600,000
Northwestern National, Wisconsin	600,000	1,223,337.52	1,823,337.52	499,766
Orient, Connecticut ^l	500,000	797,529.31	1,297,529.31	700,000
Pennsylvania Fire, Pennsylvania	400,000	2,992,689.99	3,392,689.99	2,250,000
Phoenix, Connecticut	2,000,000	2,390,939.39	4,390,939.39	1,600,000
Providence, Washington, Rhode Island ^m	500,000	668,038.61	1,168,038.61	600,000
St. Paul Fire and Marine, Minnesota ⁿ	500,000	1,315,877.31	1,815,877.31	1,000,000
Security, Connecticut ^o	500,000	361,004.78	861,004.78	315,000
Security Fire, Maryland ^p	200,000	42,445.63	242,445.63	100,000
Springfield Fire and Marine, Massachusetts	2,000,000	1,966,024.30	3,966,024.30	1,676,455
Spring Garden, Pennsylvania	400,000	290,485.47	690,485.47	150,000
Teutonia, Louisiana	250,000	136,624.46	386,624.46	150,000
Traders, Illinois ^q	500,000	1,344,722.63	1,844,722.63	3,748,000
Union, Pennsylvania	200,000	156,676.15	356,676.15	150,000
United Firemen's, Pennsylvania	300,000	224,569.86	524,569.86	200,900
Virginia Fire and Marine, Virginia	250,000	335,795.72	585,795.72	No loss.
Virginia State, Virginia	200,000	126,230.55	326,230.55	3,500
Western, Pennsylvania	300,000	63,296.74	363,296.74	No loss.
Total	40,602,875	61,734,221.08	102,337,096.08	44,827,499

^a Stockholders will contribute funds to prevent any impairment of capital.

^b Admitted to New York State to write marine business only.

^c Directors have voted unanimously to pay all losses in full and continue business.

^d Stockholders have offered to increase surplus \$1,000,000 if necessary.

^e Directors have taken action increasing capital of company to \$2,000,000 and surplus by \$3,000,000.

^f Directors have voted unanimously to pay all losses in full and continue business.

^g Reinsured in American Central of St. Louis. Not writing new business.

^h Has arranged for voluntary contribution of \$150,000 from stockholders.

ⁱ Steps have been taken to increase capital and surplus by \$1,000,000.

^j Stockholders have subscribed \$750,000.

^k Stockholders paid in \$100,000 to surplus account.

^l Loss will be paid and capital left intact with comfortable working surplus.

^m At meeting of directors April 24 it was voted to make good any possible impairment of capital.

ⁿ After paying California losses will show capital and surplus of \$500,000 each.

^o Directors will make good any possible impairment.

^p Any impairment of capital will be made good.

^q Byron L. Smith, of Chicago, appointed receiver on May 5, 1906.

FOREIGN FIRE COMPANIES—UNITED STATES BRANCHES.

	Net assets, or United States capital, on Dec. 31, 1905, under section 27 of insurance law.	United States surplus to pol- icy holders on Dec. 31, 1905.	Estimated net loss in Califor- nia conflagra- tions.
Aachen and Munich Fire	\$383,193.80	\$628,454.51	a \$2,000,000
Alliance Assurance	452,618.19	581,935.87	1,386,666
Atlas Assurance	345,371.24	801,632.32	a 1,250,000
British America Assurance	233,620.43	496,402.93	260,000
Caledonian	343,788.66	687,260.15	a 1,193,482
Cologne Reinsurance	357,458.24	458,960.16	875,000
Commercial Union Assurance	898,085.14	1,570,994.09	1,300,000
Hamburg-Bremen Fire	264,652.46	504,268.10	1,100,000
Insurance Co. Salamandra	381,263.08	583,254.79	300,000
Law, Union and Crown	457,575.26	576,086.86	a 1,000,000
Liverpool and London and Globe	3,081,157.50	5,262,279.77	a 8,500,000
London Assurance Corporation	610,490.05	857,681.75	a 4,000,000
London and Lancashire Fire	309,948.94	1,149,732.19	b 3,500,000
Moscow Fire	460,590.06	638,858.96	250,000
Munich Reinsurance	425,205.78	1,289,220.73	2,000,000
North British and Mercantile	2,112,712.24	2,939,531.23	a 3,000,000
Northern Assurance	795,258.51	1,865,347.59	a 2,000,000
Norwich Union Fire	614,843.92	891,797.64	a 1,200,000
Palatine	794,592.21	1,069,663.42	1,000,000
Phoenix Assurance	530,569.06	1,296,270.60	c 1,600,000
Prussian National	349,544.58	486,016.92	a 444,948
Rosalia	582,598.40	733,244.62	a 760,000
Royal	1,761,620.08	2,852,125.72	3,825,000
Royal Exchange Assurance	574,670.67	894,224.84	a 2,000,000
Scottish Union and National	2,548,790.50	3,338,067.82	1,250,000
Skandia	327,086.55	442,734.68	525,000
Sun Insurance Office	407,708.53	873,275.20	a 2,000,000
Svea Fire and Life	236,230.92	371,342.73	a 750,000
Transatlantic Fire	236,968.10	351,106.41	4,000,000
Union Assurance Society	591,511.70	870,314.36	a 1,500,000
Western Assurance	301,156.36	782,945.00	400,000
Total	22,193,121.52	36,125,436.26	49,670,096

a United States manager advises that loss will be paid by funds from home office, the United States surplus company suffering no depletion in consequence of California disaster.

b United States manager writes that California loss will be paid by home office funds, with the exception of \$300,000, which will be paid from United States branch funds.

c United States manager states that United States surplus will be \$1,000,000 after all California losses are paid, balance being paid by home office.

RECAPITULATION.

	Capital on Dec. 31, 1905.	Net surplus on Dec. 31, 1905.	Surplus to policy holders Dec. 31, 1905.	Estimated net loss in California conflagra- tions.
New York State joint-stock fire and fire-mar- ine insurance companies	\$19,550,000	\$50,141,946.44	\$69,091,946.44	\$18,944,000
Joint-stock fire and fire-marine insurance companies of other States	40,602,875	61,734,221.08	102,337,096.08	44,827,499
Mutual fire insurance companies of other States		386,619.64	386,619.64	No loss.
Foreign fire insurance companies, United States branches	a 22,193,121		b 36,125,436.26	49,670,096
Aggregate	82,345,996	112,262,787.16	208,541,088.42	113,441,595

a United States capital under section of insurance law.

b United States surplus to policy holders.

Mr. STERLING. Was the total loss \$213,000,000 or \$113,000,000?

Mr. BULKELEY. The New York department requested all the companies transacting business in the State of New York to make returns, and they show that the losses amount to \$113,000,000.

Mr. GILLET. Does that include all the California losses?

Mr. BULKELEY. Yes, sir; except the Firemen's Fund and the Home Company, and you have also on the coast a very considerable number of companies from the Continent that only transact business on the coast in this country, so you never hear of them in the East.

Mr. BIRDSALL. The policy holders need not be apprehensive of existing conditions which they might feel from the statement made yesterday?

Mr. BULKELEY. No, sir; and I want that statement to go broadcast to the country as strong as I can make it.

Mr. BIRDSALL. The statement was a very alarming one?

Mr. BULKELEY. There is no question about it, and it was entirely unjustified.

Mr. GILLET. I understand that the 30 per cent reserve is shown by the experience of fire insurance companies to be sufficient?

Mr. BULKELEY. I do not think you got from Mr. Dawson's statement a right impression of what the conditions in other countries are. In Great Britain the fire insurance companies are under no sort of government control. They make their own assumptions and they make their own policies. They report to the board of trade—make an annual report to the board of trade—and they are only required to live up to their contracts. There is no specific governmental control in Great Britain. It is somewhat different in some of the continental countries, but that is the condition under which the great English companies transact business in this country. In the United States, perhaps you all understand, the requirement is that a foreign company of that character must have in some one State a deposit, \$200,000 I think is the sum, and they go on and accumulate from their American business a very large amount of surplus. I have the honor to be the trustee of one of the large English companies whose headquarters are in my own State, and with a deposit of \$200,000 we have accumulated something over \$3,000,000, and we are able to pay our losses of a million and a quarter or a million and a half from our surplus funds accumulated from the American business. That is not true of all of the English companies.

If you will observe the statement you will see that the losses of the English companies are perfectly enormous; but as stated at the outset of my remarks they exceed vastly in many instances their accumulations in this country. On a 50 per cent reserve or on a 30 per cent reserve they would not have been any better. It has taken all the money they had here. It is a safe basis. It is a basis of experience of forty or fifty years, and I think that otherwise the companies could not have grown up under it, practically in thirty years—since the Chicago fire of 1871—and accumulated these large surpluses and large reserves that have enabled the great, and I might say small, American companies, to stand up under this great calamity which came to the people of the Pacific coast.

Mr. LITTLEFIELD. The estimated losses of the foreign companies in the San Francisco fire were \$49,670,096; about \$50,000,000?

Mr. BULKELEY. Yes, sir.

Mr. LITTLEFIELD. Almost half the total loss?

Mr. BULKELEY. Yes, sir.

Mr. LITTLEFIELD. And the surplus to policy holders, December 31, 1905, both United States and foreign, was \$208,541,098, against losses of \$113,441,595, showing a surplus of about \$95,000,000?

Mr. BULKELEY. I think that is right.

Mr. LITTLEFIELD. That seems to be some distance from insolvency?

Mr. BULKELEY. Yes, sir. This is what the intelligent fire underwriters of the country for thirty years have been striving to do, to

put themselves in a position where when a calamity comes, as it has to us in this country four, five, or six times, never, perhaps, to such an extent as on the Pacific coast, with the combination of earthquake and fire, they can meet it.

Mr. LITTLEFIELD. The foreign companies carry a great deal of insurance in the West?

Mr. BULKELEY. I think it figures very small, because they do business all over the world.

Mr. LITTLEFIELD. But as compared with the balance of insurance in this country they probably do a larger part in San Francisco.

Mr. BULKELEY. For the reason I stated, that a large number of companies, principally from the Continent, transact business nowhere else in the United States except on the Pacific coast.

Mr. DE ARMOND. What is there in the newspaper reports that the rates have been advanced?

Mr. BULKELEY. I can not say. I am not familiar with it because I am away from home. From the statements that I have read in the papers I think it would be the most natural thing in the world, so far as San Francisco is concerned, if the rates were advanced. If people want insurance under present conditions with a short supply of water and other conditions which prevail there, it necessarily involves a far greater hazard than ordinarily.

Mr. DE ARMOND. I understood from the newspaper statement that the insurance rates had been advanced generally throughout the country?

Mr. BULKELEY. I have the honor to be connected with one of the largest fire-insurance companies and one of the oldest companies in the country, and I happened to be home immediately after the San Francisco disaster and I know the sentiment of the gentlemen in charge of the management was against any horizontal raising of rates in order to recoup losses; but you must all understand, and I think you do, that the large amount of money for the payment of losses has got to be provided from the business itself; and from long years of experience with those calamities, coming under modern conditions more frequently than we have been accustomed to in years that have passed, there may be a necessity for providing in some way for ampler and larger accumulations, out of which to meet these calamities when they come.

Mr. DE ARMOND. From what you stated, Senator, that would hardly seem to be necessary. You instanced a British company in your own city that had accumulated \$3,000,000, only one-half of which is pledged.

Mr. BULKELEY. I would have to put up against that record the record of older British companies that have been here for years, and much larger in size, that they absorbed more than their surplus funds; and they will pay their San Francisco losses in full, retaining intact the funds they have accumulated in their American offices.

Mr. BIRDSALL. The prime object of a reserve of a fire-insurance company is to insure the ability of the company to go on and do business when calamity overtakes it?

Mr. BULKELEY. The object of the reserve is to provide for the reinsurance of their existing risks, so that in order to be solvent they have got not only to have money enough to meet their losses, but money enough with which under the law to carry your and my policies until they mature, and that is what constitutes the reserve. These com-

panies have either got to take out of their capital or out of their surplus these enormous San Francisco losses, because their insurance reserve is merely to carry their running business to maturity.

Mr. GOULDEN. Would the Senator permit me to make an interruption?

Mr. BULKELEY. If you would not dignify me with the title of Senator, I would. [Laughter.]

Mr. GOULDEN. I am not a member of that august body, but I understood some of the Members of the House recently promoted to that body have been called down, and I wish to go upon record before the committee, not as a Member of Congress, but as an insurance man of forty years' experience, as condemning the statement made by the distinguished gentleman from New York yesterday and approving the statement made to-day. I want to indorse every word that the Senator has so ably said regarding the matter of fire insurance, and also what he has said with respect to the departments of insurance in this country.

Mr. BULKELEY. It has been suggested to me, in response to the question that the gentleman asked in regard to the increase of rates, that I think the general discussion amongst the insurance fraternity has been with regard to the risks within the congested districts of our great cities, where they are enormous within a small territory, more than to any general increase of the rate.

Now, if you will excuse me for taking up your time in that discussion, I want to say for the Connecticut companies, fire and life, that we are not here to appear in opposition to the Ames bill or to any other legislation which shall tend to elevate the law which the various insurance departments of the country are called upon to administer. I had the honor nearly a year ago, in the discussion of the question of Federal supervision of insurance at a convention of the casualty underwriters of the country, and afterwards in a discussion of the same matter with the President of the United States, to state that in my judgment, as a consistent believer that insurance does not come under the provisions of our Constitution so as to be regulated by Congress, Congress has supreme authority over the District of Columbia; that it could enact legislation for the District of Columbia and create a department here which should be a credit to the makers of the law, and which in its administration should be a model for the departments of the country.

And I want to say, Mr. Chairman and gentlemen of the committee, that I think you will find, without exception, that this great interest, life and fire, which I in a measure represent, will cooperate always to the fullest extent in the building up of this beneficent business and not indulge in any efforts to pull it down.

The recent investigations in our sister State, in the State of New York, and the results of that investigation in the enactment of the laws which I see distributed around your table here, relate almost entirely to the administrative duties and to a very moderate extent to any general principles which should govern the administration of the insurance business, except as relating to the administration of the internal affairs of a company, and which, I think, Mr. Dawson correctly stated here yesterday, when he said that the Armstrong committee refused to indulge in any proposed legislation except as the

necessity for it had developed as the result of that examination. I think I am right, Mr. Ames, about that.

Now, I did not wish to criticise the Ames bill as it was first presented for our consideration. Its author and the gentlemen connected with its preparation have criticised it, perhaps, to a very much larger extent than I could in these various amendments—this long list of amendments, many minor in their details, that have seemed necessary to perfect in a measure the bill as it was first sent to Congress, coming as it did with a message from the President; not exactly with, but practically with the message of the President of the United States, recounting the results of the convention held in Chicago, and commending the legislation which was to follow—proposed legislation which was to follow—and which we have.

Now, from the time that the bill was first introduced to the date of this reprint, April 30, there is this last score of amendments which I, being a somewhat busy man, have not had time to go through. What I think is this, that we should take time to enact and to prepare. I have no doubt that my friend has given the most careful study to this bill, and I commend his work, for I know the time and thought and intelligence required to draft a law, and I know that it is impossible for one or two or three men to get together the necessary elements and construct, in the short space of time that could be devoted to it, a law which would meet my ideals of what I would hope would be the legislation of this Congress whenever they prepare another code for the District of Columbia.

Of course, a large part of this bill is taken up with details, with forms of policies, standard policies, and several pages with forms of returns. It is only a suggestion—I have just brought this with me [indicating specimen form of return] to show you how simple and yet how extensive are the requirements at present.

MR. LITTLEFIELD. Excuse me, Senator, but have you duplicated the paper that you submitted to the stenographer a few moments ago?

MR. BULKELEY. No, sir; I have not. It has come in my mail every morning—

MR. PARKER. I will send for 20 copies.

MR. BULKELEY. It does not seem to me that there is any necessity, in enacting a code of laws, to prescribe the form of a return, and it is my opinion that that should be very largely left to the Department to determine; and the result of forty or fifty years' experience with the Departments, working in connection with the companies, has been to develop practically a uniform blank, so that with the exception of two or three States we have a uniform blank, formed under the direction of the insurance commissioners, which, I think, is in detail as close an examination of the business of a corporation as could be conceived, coming down, as it does, to the expenditure of a postage stamp or telegram. If any of you choose to examine it, there is what we call the uniform blank [submitting same]. That is the return made to the District of Columbia. I am engaged in a good many classes of business. The Aetna Life transact a life, personal accident and health, and what we call a liability business, affecting persons, not property.

MR. PARKER. Does that blank provide that returns of profits or dividends on tontine policies shall be made?

MR. BULKELEY. It provides for a loss and gain account.

Mr. PARKER. I mean those special classes of policies?

Mr. BULKELEY. No; it is intended in loss and gain to show in the statement what the profits are in a year, so that one can determine from that loss and gain exhibit whether we are spending more than the loadings that were intended to be used for obtaining the business. Now, there are the complete returns of the business of \$13,000,000 of premiums covering life, about \$10,000,000 covering personal accident, about \$3,000,000 of liability, and health of about \$2,000,000 [submitting specimen returns]. There are the returns to the various departments.

Mr. STERLING. Covering what length of time?

Mr. BULKELEY. One year.

Mr. AMES. An interruption, Senator. On page 8 of this draft, Form A, the form for life insurance companies, your form there follows this rather closely, does it not?

Mr. BULKELEY. I presume it does. What I say should not be confined to insurance superintendents. I do not know but that this provides that they can ask other questions, but it does not seem necessary to burden up a code with the form of returns. I do not think there is half in there that there is in this report [indicating same]. I do not think you could put it in unless you published a book about as large. [Laughter.]

Now, those [indicating same] cover a business of thirteen or fourteen million dollars in detail. There is a list of bonds and mortgages [submitting list].

Mr. STERLING. Is there anything in the bill required to be reported that is objectionable?

Mr. BULKELEY. No, sir; but what I object to is to lay down a cast-iron rule.

Mr. GILLET. Colonel Bulkeley says that the form already made is more complete than the form called for.

Mr. BULKELEY. Yes, sir; there is a list of the assets outside of bonds and mortgages. [Submitting printed statement.] These are blanks prescribed by the commissioners as the result of thirty years' experience. There you will find a list of collateral loans [submitting document], the details and market values of every security.

Mr. PARKER. Where could we get copies of those blanks?

Mr. BULKELEY. I presume Mr. Drake, of the department here, can furnish you with those.

Mr. DRAKE. We have them.

Mr. BULKELEY. Now, the companies in Connecticut have no objection to any suitable examination by any commissioner, if it is necessary. You provide for certain certificates that shall be accepted by the commissioner; that he shall not make any examination, that he shall make one, and all that kind of thing. I think there should exist a comity between the States by which officials should be recognized, and that if the commissioner of the District of Columbia or of any State, unless he has good reason to believe that a State insurance department is corrupt, should be satisfied with a certificate of solvency from the commissioner of the State in which the company is located, and if he wants additional information he should acquire it through the commissioner of that State, or in conjunction with him, if he desired to make an examination.

Mr. AMES. Another interruption, Senator. On page 10 of this bill, section 11—

(11) A complete statement of the profits and losses upon the business transacted during the year, and the sources of such gains and losses, and the actual expenses chargeable to the procurement of new business incurred since the last annual statement, and also showing the manner in which any general outlays of the company have been apportioned for the purpose of arriving at the amount of such expenses.

Is not that a requirement beyond your form of a return?

Mr. BULKELEY. There is nothing there, except reasons assigned for resisting or compromising the same. You will find in every report death claims resisted or compromised. You will find that in every report, I think; in fact I am quite certain that particulars of reasons assigned for compromising the same are given.

Mr. AMES. Section 11?

Mr. BULKELEY (reads):

A complete statement of the profits and losses on the business transacted during the year, and the sources of such gains and losses, etc.

I think you will find that is what is known as the "loss and gain exhibit," which was originated by the Wisconsin department and which is required in most of the States.

Mr. AMES. Does not this give more complete information with regard to the sources of such losses or gains?

Mr. BULKELEY. I do not think so.

Mr. AMES. Go to page 11, section 13.

Mr. BULKELEY (reads):

The rates of annual dividends declared during the year for all plans of insurance and all durations and for ages at entry, twenty-five, thirty-five, forty-five, and fifty-five, and the precise methods by which such dividends have been calculated.

Mr. AMES. We have submitted an amendment to that, making it the rate of premiums and annual dividends.

Mr. PARKER. I can not hear that.

Mr. AMES. We have submitted an amendment changing that section 13 so as to read: "The rate of premiums or annual dividends."

Mr. BULKELEY. Can you tell me some way in which we can incorporate in the annual report all that there is in that book? [Laughter.]

Mr. AMES. We are not seeking that.

Mr. BULKELEY. That is what you are asking for, and that is just what is in that book.

Mr. AMES. I do not believe I am technically informed enough in your profession to be able to answer your objection.

Now, the next section, section 14—

Mr. BULKELEY (reads):

A statement showing the rates of dividends declared upon the deferred dividend policies completing their dividend periods for all plans of insurance, and the precise method by which said dividends have been calculated.

That is a requirement that might possibly be met, but all companies have different methods of calculating dividends. One thinks it has a better method than the other. One thinks it has one that is more to the advantage of the policy holder than the other; one that produces better results to the policy holder than some other companies.

We claim that we are entitled to the benefit of our ingenuity and should not be obliged to expose it to our competitors in the business,

and if we can conceive in our own minds a system of business for our own company; that is, a better scheme than somebody else's, either in the declaration of dividends or in the administration of our affairs, we claim we are entitled to the benefit of that ingenuity, just the same as a great corporation or an individual is entitled to the benefit which he secures by coming down here to Washington and obtaining a patent on some great invention. We come here with a copyright in which we try to preserve some of the ideas that we may have evolved in the course of our business, ideas that nobody else has; and I do not believe that any commissioner is entitled for his own benefit or for the benefit of any inquiring policy holder, perhaps, to have that information, and I do not think the company should be required to put into its annual report the manner of computing the different classes of dividends which we have—some annual, some deferred, some yielding no dividends at all.

Mr. STERLING. Of course, the record shows the amount of dividend declared?

Mr. BULKELEY. The loss and gain exhibit shows all that.

Mr. AMES. Aside from the question of the amount of information that this return might give and in connection with the standard form of return you believe, do you not, that if we could have a standard form of accounting throughout all the States it would be advantageous?

Mr. BULKELEY. You have got it already.

Mr. AMES. For one company? Each company has its standard form?

Mr. BULKELEY. No; you have a standard form of accounting in practically every State. And I want to say this, just at this stage, that all this talk and humbug, to my mind, about the expense of filing reports with 45 different States is perfect nonsense. We make a report in writing to the State of Connecticut, and I think only in one other State; and as you will observe, when that report is completed we send it to the printer and have the figures put in cold type and the reports to forty-odd States are made in a printed form.

Mr. AMES. I understand that; that is for your company.

Mr. BULKELEY. For every company, and they are made on what is known as a uniform blank, prepared and agreed upon by the insurance commissioners.

Mr. NEVIN. Does each State have a separate one of its own?

Mr. BULKELEY. The insurance commissioners of the various States in convention have agreed upon this uniform blank, and these reports are practically similar to those of every State. There may be one or two that are different. Massachusetts requires something a little different; I am not familiar with the details of that; and I think one other State also. But aside from that, the reports from all the States are uniform and are what is known as the uniform blank. I think I am right, Mr. Drake?

Mr. DRAKE. It is called the convention form.

Mr. BULKELEY. Yes, decided upon by the commissioners themselves, as the result of their experience.

Mr. DRAKE. That statement, Mr. Chairman, is revised every year at the end of the national convention, so that it is brought right down to date. Any innovations or improvements that are deemed expedient to embody in it are incorporated in it every year, and the companies in each State have the same form, with the exception of two States,

Massachusetts and New York, which have some few lines, very simple and few, that are different. They are passed upon by the convention.

Mr. BULKELEY. Understand, I do not say all these things can not be corrected in the Ames bill. I am only picking them up as I go along.

The next thing that I remark is that the idea in all the talks I have heard is to protect the companies and the policy holders against outrageous charges. As a general thing, I think, under the present code we have had extravagant charges for matters connected with the insurance business in the District of Columbia, except in the matter of taxation, as in all the States. I do not know whether you tax premiums or not.

Mr. DRAKE. Yes; the net premium receipts are taxed $1\frac{1}{2}$ per cent.

Mr. AMES. I hate to trouble you, but I am informed that the insurance commissioners, at their convention, usually adopt each summer this uniform blank which you exhibit. I do not understand that there is a gain and a loss exhibit in that uniform blank.

Mr. BULKELEY. I think you will find a difference of opinion among commissioners as to the propriety of the gain and loss exhibit. Some of the States do not require it and some do—

Mr. AMES. So that to get it from each State it would be necessary—

Mr. BULKELEY. Each State does not require it. I will admit that, but you get it in some way. Most of the States think it is entirely out of the question and improper, and most of the companies do.

Mr. AMES. Do you not personally think that the gain and loss exhibit ought to be made?

Mr. BULKELEY. I do not think it is of any value whatever. We show it to you in a general statement. When you go to work to examine what is called the gain and loss exhibit, you will find it does not amount to anything. You have got it already, practically.

Now, here on page 22 of the bill you will find some charges and fees. Of course, it is a small item. For foreign companies—those are the companies of other States—"For filing certified copy of charter or certificate of incorporation and by-laws, \$30." There it is, gentlemen. [Submitting specimen charter.] That is what we sent to the Department, and there is \$30 for handing it into the Department.

Mr. BIRDSALL. It ought to be about 30 cents. [Laughter.]

Mr. BULKELEY. "For filing statement of financial condition, \$20." That is this annual statement [indicating].

Mr. DE ARMOND. There is really more work connected with filing it than there is with the other, because it is larger?

Mr. BULKELEY. Certainly; there is no work about that. It is but a few pages of printing. It is the charter of the company. That is all.

Mr. AMES. Another interruption: You know the provisions of this bill make no provision for taxing the premiums of the companies?

Mr. BULKELEY. That is what we are trying to get rid of.

Mr. AMES. Do you not think an insurance department should be self-sustaining?

Mr. BULKELEY. Why?

Mr. AMES. Any department in the States should be.

Mr. BULKELEY. What department here is self-sustaining, except Members of Congress? [Laughter.]

Mr. DRAKE. The District insurance department here is not only self-sustaining, but we have turned into the Federal Treasury nearly \$300,000.

Mr. BULKELEY. That comes from the 1½ per cent tax?

Mr. DRAKE. Principally; yes, sir.

Mr. AMES. If you cut out the tax, should you cut out the \$20 and \$30?

Mr. BULKELEY. I am not kicking against it, but I am showing the inconsistency of the bill. When you try to get up a code—

Mr. DE ARMOND. You are pointing out places where somebody might kick?

Mr. BULKELEY. Yes. Why should people in California or New York pay for the support of a department of insurance in Washington?

Mr. AMES. I can answer that to your satisfaction. A code to be adopted by the several States ought of necessity to be a code that would provide the wherewithal for its own supervision, with foreign insurance companies coming into the States to do business.

Mr. BULKELEY. Let me tell you, we never charge a foreign insurance company in Connecticut a dollar in the way of taxation. There are, it is true, some minor things of this character, but we never charge them a dollar of taxation on their premiums except through the retaliatory law, and you have got it here; and the great New York companies, after they enacted a law taxing the companies in other States on their premiums, were compelled to pay in Connecticut under the retaliatory law five times as much as the Connecticut companies were compelled to pay in New York. I should say that all these retaliatory laws are wrong, and that is one of the things that I want to call your attention to in this bill, if I have time; and you want to strike out, in my judgment, such things, and make a law which you think is right for your own companies, and permitting other companies to do business within your own borders, and not because some State has made a bad law make it practically the law of your District as a retaliatory measure.

Mr. AMES. Is it not true that in the wisdom of the legislators in Massachusetts they collect above and beyond any necessity for insurance supervision of foreign companies some \$30,000 a year, New York some \$100,000, Ohio \$1,000,000 and some hundred thousand dollars? And yet you think as a practical proposition that these legislators should say that no revenues should be demanded to meet the expenses of the supervision of foreign companies?

Mr. BULKELEY. I just say that exactly, and I say that the cause of all the clamor that has been raised in this country for the last twenty-five years for Federal supervision of insurance was to get rid of the onerous taxation of States like Massachusetts and Connecticut. They are the worst ones in the business. [Laughter.]

Mr. AMES. Measured according to what standard?

Mr. BULKELEY. It is the standard of Massachusetts and Connecticut. That is high and equal to any standard in this country of men and measures generally, but they have a love of money, and when they see a big pile of it they know the way to go and get a big part of it. [Laughter.]

I am glad that the gentleman did not follow the example of Massachusetts and put a tax on premiums of these companies that are trying to do business to some extent for the benefit of their policy holders

scattered all over the country, and in that wisdom he has exceeded the wisdom of his local legislature.

Now, here is a charge which is common in Massachusetts for filing an amendment to articles of incorporation, no matter how small—one or two or three lines. You will find it on this same page:

For filing amendment to articles of incorporation, \$10; for filing annual statement, \$20; for abstracts or summaries of annual statements for publication, when prepared by commissioner, each \$5.

They are little things.

Mr. STERLING. It seems to me, Senator, if this rate of taxation could be uniform in all the States, there could not be any particular objection to it. Would there be?

Mr. BULKELEY. We have to have some method of raising money to conduct the governments of our several States. We have seen it in Connecticut. I can never say anything, and never do, against the taxation by other States of insurance companies on their premiums.

Mr. STERLING. The injustice arises from the inequality of the rates?

Mr. BULKELEY. It is not so large. It will run from $1\frac{1}{2}$, if I remember correctly. I am taking up a great deal of your time.

Mr. PARKER. No, sir; not at all.

Mr. BULKELEY. It is rather a big report to find in these States, but you will find it there, and I will leave it with the committee if the committee would like to look at it. There are the requirements of the several States [indicating document]. It was prepared twenty-five years ago by Sheppard Homans, one of the noted actuaries of the time. I have brought down in red ink the same requirements of a year ago by the different States and for all different purposes; for preliminary documents, for attorneys, for valuations for annual statements, for general certificates, fines, licenses, taxes, discriminations, and miscellaneous.

Mr. BIRDSALL. In the final analysis, whatever the charge may be, by tax or otherwise, it falls upon the policy holder?

Mr. BULKELEY. Absolutely. We have no other source from which to pay. It is our claim and we have tried to present it, not to Congress, but in the various States, for which we are sometimes criticised—for trying to control or to lead, if you please, legislation upon these subjects which experience seems to warrant. We are more criticised for opposing the methods of taxation, or any taxation at all, than for probably any other thing that we do.

As I said, I would not tax. I am met in my own State and elsewhere with the idea that "it is property that you hold here in Connecticut that is taxed." We only hold it in other States a very little while. We gradually turn it back. Some of the States have a very equitable method of deducting from our premiums in the States the amounts we pay in those States for losses and endowments in a year and tax the balance.

Mr. NEVIN. How do you suggest that these expenses of the department should be paid?

Mr. BULKELEY. How do you run the Congress?

Mr. NEVIN. That is the Federal Government.

Mr. BULKELEY. We do not get half enough now. That is the trouble; that is, up in Connecticut. They do not tax the people upon what they have got.

Mr. PARKER. How long is that statement in that book? Could you prepare a little extract from it to go into the record, showing those taxes?

Mr. BULKELEY. It is 2 pages here. I can leave the book with you.

Mr. PARKER. No; we do not care for it.

Mr. BULKELEY. Now, here is a provision in regard to classes of business permitted. It affects my own State probably more than anywhere else. We have had the same question arise everywhere.

Now, there are two companies, one of which I have the honor to be president, and of the other Mr. Messenger, who spoke to you the other day, is the actuary. We are by our charter permitted to transact a life and personal accident, health, and personal liability business, not affecting properties; and those two companies in those classes of business transact 40 per cent of the entire business of the country (excluding life), in the personal accident, health, and personal liability. These two companies transact 40 per cent of the premium income of the country, and under the provisions of this act we would be debarred from doing business in the District of Columbia.

Now, we have had that question arise in various States on the ground. I presume, that my friend has followed that a company could not come into a State and do classes of business which a domestic company was not permitted to do in that State. We went through long litigation in Illinois because that was simply a ruling of the commissioner in his interpretation of the law, and also in Ohio; and the decisions of the commissioners were practically overruled, and we were both permitted to continue in the States and do these three classes of business, although a domestic company was not permitted to.

Mr. PARKER. Senator, ought there to be any limitations in the law preventing a life company from doing a property or accident insurance business?

Mr. BULKELEY. Yes; I think that is a fair discrimination. Our business is connected only with the lives and injuries of persons and their health, and I do not think we should be given permission to insure property. I would not ask that anywhere, although I think you will find that condition in Great Britain. The great fire companies of the world also transact a life business, and are permitted to. But it has never been thought wise in this country, and I should not advocate for myself any such permission.

Now, it is very inconvenient for the concerns and policy holders—this simple provision on page 26:

Contracts of insurance against the different classes of loss which are permitted to be made by a single company shall be contained in separate and distinct policies.

Mr. AMES. An amendment submitted is to strike that out.

Mr. BULKELEY. I have not had time to go through the amendments.

Mr. STERLING. We would like to know your objection to it, Senator, because these amendments have not been passed upon or considered.

Mr. BULKELEY. I can not conceive any possible objection to including in a single policy all the risks to which I have referred, that I would write in my company; that is, life, personal accident, and health, for instance, in a single policy, instead of lumbering up with three policies.

Mr. PARKER. Before you go any further, Senator, I notice that this allows Nos. 1 and 4 to go together; that is to say, to insure the lives

or health of persons under the first, and under the fourth to guarantee the fidelity of persons.

Mr. BULKELEY. I did not suppose that they had got it that way.

Mr. PARKER. No; the first and fifth, to insure against bodily injury, and then the fourth, sixth, seventh, and eighth, which are fidelity insurances. The injury or death of some one, caused by the explosion of steam boilers and insurance of plate glass are allowed to go together, but there is nothing to put fire and marine insurance together.

Mr. BULKELEY. They are generally separate in this country, and have always been, except for inland navigation. Our fire insurance companies, or many of them, in Connecticut, write what they call inland navigation policies, but the great marine insurance companies of the world are absolutely separate, both in this country and in England. They are absolutely separated from the fire underwriting.

The distinction, Mr. Chairman, that I would draw is practically this, that a class of risks that covered the life or the health or the injury of an individual can properly be classed in one form of insurance. That is what we commonly know as employers' liability insurance—health, and personal accident, and life. They are all connected with the individual and with an individual injury, whereas many of these others embrace the insurance of properties. That is the distinction that I would largely draw.

Mr. AMES. While you are on page 26, from lines 6 to 10, do you think those limitations or requirements are too severe?

Mr. BULKELEY. I do not think the capital is any two large; no. I think that is all right. I am for putting the companies of the country on the highest standard of security for the policy holders that can possibly be done, anywhere and everywhere.

Mr. PARKER. One seems to be left out; the fourth is left out of any capitalization, and I would like to ask was that intentional—fidelity companies and burglary companies?

Mr. AMES. I do not think it was.

Mr. DRAKE. May I answer that question, Mr. Chairman?

Mr. PARKER. Yes; certainly.

Mr. DRAKE. I think that was eliminated because of the law enacted in 1904 by the Federal Government requiring surety and fidelity companies to qualify before the Department of Justice and make returns to the Comptroller of the Currency. I think that omission was made for no other reason, and I have recommended in my report to the Commissioners that they be brought under the supervision of the Department in the District of Columbia.

Mr. BULKELEY. If the bill were adopted the classes of business could be created according to my views on page 26, line 16, by inserting the first, fifth, and sixth classes there, so that what is known as the employers' liability, in which the Aetna and Travelers' are engaged and which only affects the person and not the property. That is the distinction I draw.

Now, on page 31—if I am wearying the committee I will stop at any time you suggest—under the heading "Companies issuing participating policies not to do a nonparticipating business"—

Mr. AMES. The amendment offered on that was to strike out on line 9 the words "and no," and on line 10 the entire line, and on line 11 the words "to issue any participating policies," and on line 14 to

strike out the words "as provided in this chapter." Strike all that out and at the end of that section insert in lieu thereof these words:

This section shall not apply to annuities or to paid-up or temporary and pure endowment insurance, issued or granted in exchange for capital or surrendered policies.

Mr. BULKELEY. That does not improve it any, from my standpoint. Now, if anybody can tell me why any insurance companies if they choose, mutual or stock, could not give its policy holders the benefit of the lowest-priced insurance that can be furnished, I would like to have him tell me. I happen to be the president of a stock company, and we do a considerable stock business, but we have a mutual department within our company much larger than the stock, in which the assets are absolutely kept in separate form. The dividends are made for that department. They have the benefit of all the earnings of that department, and are returned to them in the shape of dividends on their policies.

Now, in our stock department we furnish insurance at rates practically 20 per cent lower, so that an insurer on the stock plan of insurance gets the benefit in advance of an annual dividend, if he desires it, and if anybody can tell me why a mutual company should not issue as they propose to let them under this amendment, under certain conditions, why they should not at the inception of a policy issue a low-premium policy if their policy holders or applicants desire it, I would be glad to know why. I have never yet been able in twenty-five or thirty years' experience to see why they should not. But under that provision I can not come into the District of Columbia and do business, and I have got a company with \$80,000,000 odd of assets, and the Travelers can not come in here. They do business on both plans, with a guaranteed annual dividend, not a participation in the profits, but a guaranteed annual dividend on their participating policies and their low-rate stock scheme.

Mr. AMES. Is not that one of the especially important provisions of the Armstrong code, the new code in New York?

Mr. BULKELEY. I think they have done as foolish things as any committee or any legislature ever did, and if you will only give them time to get back to Albany they will repeal them, or some of them, right after they get there. [Laughter.]

A BYSTANDER. That is right.

Mr. BULKELEY. I do not know on what theory, except on the theory of Mr. Dawson, that they ever indulged in any legislation of that character. They will say to you and to me that you policy holders are not on an equal footing; that in the mutual company they should all be on an equal footing, and that one man should pay the same as another man. They will all be on an equal footing in a reasonable number of years, and the stock policy holder will only have an advantage of a lower rate. Mutual policy holders will have an advantage of a lower cost to the company of the stock insurance, because the loadings of the stock policy will never warrant much more than the half for the expense for that character of business that the mutual rates will allow.

Mr. AMES. You say in a reasonable length of time both classes of policy holders will be on the same footing?

Mr. BULKELEY. Yes.

Mr. AMES. Why should they not be on the same footing from the beginning?

Mr. BULKELEY. I claim that they are from the inception, putting the apparent differences in the premiums together. The mutual in the course of seven, eight, or nine years under old rates of interest, with an annual dividend, would get down to an annual premium of a stock policy. The mutual had the benefit of a lower rate of expense, and also had the benefit of the gains in mortality of the stock policy holders.

All this business is a law of averages, gentlemen, and nothing else. You all know—it is as old as the hills—that there is nothing so uncertain as the life of one man, and there is nothing so certain as the average life of a thousand men; and all these tables, whether they are stock or participating, are based upon a uniform rate of mortality, and the net premium which is required to make up the reserve and to make the contribution of the policy holder to the losses, is just the same under a mutual policy as it is under a stock policy.

Mr. STERLING. Would you say that is true of all the different kinds of policies—life policies, ten-year payment policies, and all kinds of policies?

Mr. BULKELEY. Under any form. The net rate is just the same, whether mutual or stock; and the only difference in the premiums is the way they are loaded. In a stock rate we simply load them from 10 to 25, or possibly to 30 per cent—none higher than 30—and under the mutual policy we load them 50, 60, or 70 per cent. Now, that is the difference. I have never been able to conceive any reason why you should not permit a policy holder to secure the form of policy that he wanted.

Mr. STERLING. In practical operation, Senator, does the policy holder get back all of this loading that he is entitled to?

Mr. BULKELEY. That is a mere question of administration—of what is spent in the conduct of the business. And I want to say in that connection, Mr. Chairman and gentlemen of the committee, that in the development of this great insurance business which has grown up in the United States of America in the last sixty years practically, or sixty-five years, its introduction, its slow growth for twenty years, and its later upbuilding has all been effected at a relatively low cost. All its great growth has been since 1860, and prior to 1860, I venture to say, there was but one company in this country that wrote 1,000 policies a year, and the assets of all of them put together would not fill a basket in the great coffers of one of our great life-insurance companies of to-day; and that business has been built up to the magnificent structure which it is to-day in its beneficent work at as small an expense—as small an average expense to all the companies combined—notwithstanding these great demonstrations that we have had in New York of so-called extravagance, as any other contemporary business. I am not here to criticise the New York companies for their extravagance. I do not know anything about them except what I read in the press. But altogether they have been built up at even a less average expense to the policy holders than any business that has been built up in this country within the same time. It has been built up at an average expense of less than one-half the cost that it has taken to build up your magnificent structures of fire insurance of which we are all so proud to-day; and this charge—I care not how broad it is made—I would like to reply to, and challenge anybody—an expert actuary, if you will—to prove that I am wrong in that statement.

I understand that on page 33 it is proposed by an amendment to make a change, but to show how easily even the most magnificent mind can slip into mistakes in regard to investments I will just read it. I understand it has been suggested to strike it out in these proposed amendments. But here, gentlemen, is a bill purporting to be the wisdom, the combined wisdom of governors of States, actuaries of companies, insurance commissioners assembled in Chicago, and their work commended by the President, which contains a clause like this [reads]:

Ninth. If the capital can not be conveniently invested in the modes hereinbefore prescribed, not exceeding one-third part thereof may be invested in bonds or other personal securities, payable and to be paid at a time not exceeding one year, with at least two sureties.

That is, an indorsed note of two sureties. That would permit each of the great companies of New York—the three great ones—to invest \$400,000,000 in indorsed paper.

Mr. AMES. I think, if you will pardon an interruption, you will find that the provisions that the commissioners at Chicago approved put no limitation whatever upon the investment of the assets of a company other than its capital stock, so that the President should not be accused of indorsing that.

Mr. BULKELEY. Oh, no; I am not accusing the President. He approved the action of the convention.

Mr. AMES. You believe there should be a limitation put on the investments of the assets of a company?

Mr. BULKELEY. I do not think there is a life insurance company in the country that would take one of these assets for a moment.

Mr. AMES. What they approved of was that there should be a limitation of those assets.

Mr. BULKELEY. What is the capital of a mutual life insurance company? They have not got any.

Mr. AMES. Then this does not refer to your mutual companies.

Mr. BULKELEY. Of course, all the courts I know about have decided that the capital of a company is its assets.

Now, go on and see:

If the principal and sureties are all citizens of the United States and residents of the State in which the loan is made, provided that the total liabilities to such corporation of a person or of any partnership, company, or corporation for money borrowed upon personal security, including in the liabilities of a partnership or company not incorporated the liabilities of the several members thereof, shall not exceed five per centum of such capital.

Now, I question the wisdom by which the permission is given to invest in personal notes, even with good indorsers, to a life insurance company or any other company, or fire. I would put that all in the pot.

Mr. AMES. Is not that in your Illinois and Massachusetts laws to-day?

Mr. BULKELEY. I do not know what the law is, but if the *Ætna* Life Insurance Company takes up to Mr. Cutting in their report \$500,000 or \$1,000,000 or \$10,000,000, Mr. Cutting will write us back, and any other commissioner will, and if he does not he ought to be turned out of office. He will write us back that they are not a proper asset for a life insurance company to hold.

Mr. BIRDSALL. That seems to be a provision for unprofitable financing.

Mr. BULKELEY. I understand that when the author of this bill sat down to look it over he had stricken it out, but I speak of it only to show that what comes to us purporting to be a well thought-out model code does not embrace everything that is perfection, and I am not surprised at all that it does not. We men who have been in the business—

Mr. AMES. I am surprised that it contains as much as it does. [Laughter.]

Mr. BULKELEY. We gentlemen in the business have learned one thing, and that is that there is in our business something new to be learned every day; and the officers of these great corporations—I think there is hardly one on this committee or one within the hearing of my voice that fully appreciates the immensity of these corporations and the influence which they are bound to wield in the interests, financial interests particularly, of this country within the next twenty years. They are bound to control, gentlemen, as they do almost now, through their holdings of the securities, the great interests of the country, concerning which we are having so much trouble here to legislate in Congress to-day, and they through their holdings will control within the next twenty-five years, and be the great financial power of this country, through their managers and through their holdings of these securities in which they are bound to make their investments.

Mr. DE ARMOND. Would it not be a tolerably good scheme, in view of that, to try to legislate in some way to lessen this power?

Mr. BULKELEY. I do not know. I have talked all my life with the fear of this in view, and the conditions that we have in New York to-day never arose from any mismanagement or lack of good administration within the companies themselves, but they arose, in my judgment, simply from a jealousy on the part of the great monied interests of the country seeking to control those institutions, and in my humble opinion, gentlemen, in the hasty legislation which they have adopted New York has jumped out of the frying pan, to use a homely expression, into the fire. Instead of having a divided control of those great interests, as we have always had, they have concentrated that great financial power, that controls its banks and its trust companies and its life-insurance companies with their enormous interests, practically in the hands of one man.

Mr. DE ARMOND. Who is that? He would be a good man to know, I should think; he might be. Do you not think it would be better for the country in general to have the business done by a large number of comparatively small companies than by a comparatively small number of large companies?

Mr. BULKELEY. I do not think you can ever furnish insurance in this country so cheaply as it can be furnished to-day by the thirty or forty level premium life insurance companies that are doing business here.

Mr. DE ARMOND. Then you believe a few large companies would be better for the general public than a considerable number of smaller ones?

Mr. BULKELEY. Yes, as a matter of economy. It is almost impossible, under the regulations of States, of various character, to organize and to set in motion the wheels of a new life insurance company at any reasonable expense that the policy holder ought to be put to.

Mr. DE ARMOND. Should not legislation, especially a model code, go to the correction of that abuse? You do not regard it as an abuse?

Mr. BULKELEY. No.

Mr. DE ARMOND. Do you not think it an abuse that people having abundant means and ready to start a new insurance company are restrained and prevented from so doing by the existing condition of things?

Mr. BULKELEY. No; you can not start. I do not know any conditions in the law that prevent it, but—

Mr. DE ARMOND. I misunderstood you, then.

Mr. BULKELEY. There is nothing to prevent any aggregation of men that choose to go into the life insurance business to-day from organizing a company in the State of New York under general laws. In Connecticut they can organize under special charters, and they are all on an equal footing.

Mr. DE ARMOND. I misunderstood you, perhaps. I understood you to say that the condition of things is such that it could not be done.

Mr. BULKELEY. I do not say they can not, but they will not.

Mr. DE ARMOND. What is the reason they will not?

Mr. BULKELEY. Capital is not seeking for that class of investment, and individuals are not seeking for that class of trouble. [Laughter.]

Mr. DE ARMOND. Stated in another way it gets down to this, does it not, that a comparatively few enormous insurance companies have such a monopoly of business and such a monopoly of the means of controlling business that other people are deterred from engaging in that particular business?

Mr. BULKELEY. I do not think it is that.

Mr. DE ARMOND. Then what is it, Senator?

Mr. BULKELEY. It is difficult to go into this business and acquire the confidence of the public. Would you go into a new company yourself, I ask you, with a hundred thousand dollars of assets and insure your life in it, when you can go into one of \$150,000,000 assets—not necessarily one of the biggest of the companies, but with a company long established that has long experience and had a volume of business on their books that gave them a fair average rate of mortality—would you go into a small company like that in preference to one of considerable size already established?

Mr. DE ARMOND. I do not know what I would do about that. I do not know much about it.

Mr. BULKELEY. What I am trying to illustrate is how it would strike you if I were an agent representing a small company with \$100,000 of assets and 500 policy holders, and another agent comes along representing a company of \$150,000,000.

Mr. DE ARMOND. I would not suppose that necessarily the hundred and fifty million dollar one would be a better company to insure in than the other. There are a great many considerations. But \$100,000 is probably a small capital to start a business of that kind with?

Mr. BULKELEY. Any company can start in New York with \$100,000. That is the reason why I mentioned that sum.

Mr. DE ARMOND. I know, but with an abundance of capital in this country, if legislative conditions were such that these enormous companies did not have the advantage, what is to prevent your starting other good-sized companies?

Mr. BULKELEY. One was started in Washington with a million under the administration of that great financier, Jay Cooke. It did

not exactly bust, but it was relocated in Chicago, I believe, and it is now being rejuvenated. It is difficult—

Mr. DE ARMOND. I know it is difficult, but when you are working on the theory of model codes, ought there not to be something put into the code to open up avenues for other people to engage in the insurance business and prevent the monopoly of the comparatively few in it?

Mr. BULKELEY. I would like to cite an instance, if you will pardon me. A few years ago we had the three great New York companies come up to Connecticut and apply for the passage of a law forbidding any life insurance company to have insurance in force to the extent of over \$1,000,000,000, and the representative of the Connecticut companies referred them to their own legislature if they wanted such legislation, stating that we were in no danger of ever having \$1,000,000,000 insurance. There is hardly one of those three companies but what to-day has got nearly twice that amount. I do not know of any way that you can stop it unless you prevent their doing any new business at all when they reach a certain amount of insurance, except to keep up to that amount, and then you can stop any company to-day.

Mr. DE ARMOND. Could there not be a limitation on the amount of business done in order to prevent the concentration in a comparatively few companies of all the business?

Mr. BULKELEY. Three large companies, of course, have half of those assets, and the rest of us are divided up with seventy-five or one hundred and fifty or two hundred million dollars. But you should stop us to-day from getting new business, we will go on for the next ten or fifteen years, and at the end of that time we will have doubled the assets we have now, and then we will begin to go down hill.

Mr. PARKER. Senator, you have a considerable number of amendments to this bill still to cover, and it is now nearly half past 1 o'clock. Would it not be better to suspend now and go on again this afternoon? I want you to continue, but I suggest perhaps it would be better to continue this afternoon.

Mr. BULKELEY. I have talked too long now, perhaps, and if you wish to adjourn now, all right.

Mr. NEVIN. I suggest that the committee take a recess now until half past 2 o'clock this afternoon.

Mr. BULKELEY. Pardon me, I did not want to take all your time.

(Thereupon, at 1.15 o'clock p. m., a recess was taken until 2.30 o'clock p. m.)

AFTER RECESS.

(The committee resumed its session at the expiration of the recess, Hon. Richard W. Parker in the chair.)

STATEMENT OF HON. M. G. BULKELEY—Continued.

Mr. BULKELEY. The one or two things that were left when I closed my talk this morning you will find on page 42, under the "Annual distribution of dividends." I probably can not talk as intelligently as an actuary on that subject, but my experience would be in this line: During the last fifteen or twenty years, by the change of methods of business of the life insurance companies and their concessions to their policy holders in various ways, in the granting of extraordinary privileges

and the decrease in the general rates of interest, an annual distribution of dividends has been rendered practically unnecessary, for the reason that the sources of those dividends in past years have been practically given to the policy holders in the concessions in their policies. So that to-day the excess rate of interest above that required to maintain and compound our reserve is practically the only source of income from which to declare dividends unless it is deemed safe and wise to indulge in a distribution of mortality gains, which has always been a very grave question with conservative life insurance men, as to its propriety.

It is admitted by so distinguished a gentleman as the actuary of the Armstrong committee that he would distribute practically those mortality gains in the way of increasing the provision for the expense of the company during the first four or five years, and with the idea that that would level up the standing of the insured, and that those mortality gains, spread over the expense of the early days of the business, would practically put the newer insured upon a level with the older ones.

Every policy holder in a strictly mutual company becomes an old policy holder after one year. It may be determined to be one, two, three, four, or five years, but gradually they all assimilate to the same level. The old policy holder of to-day was a new policy holder a few years ago, and the same expense was indulged in to bring him into the fold that is spent on the new policy holder to-day, and it is the average of expense over the whole period of the existence of our policies that puts the policy holder on a common level, no matter what the initial expense may be.

I want to call the attention of the committee to the fact that all this great volume of insurance which the level premium life insurance companies of the country are carrying to-day, practically we have got to replace within a less period than ten years. The average life of our policies of all classes in the level premium life insurance companies to-day is less than ten years, expiring for various reasons—by death and from one cause or another—so that, not the individual policy, of course, I do not mean, but the average of our business, is something less than ten years for the existence of a policy in its original form. There is no opposition, so far as I know, to annual dividends to anybody that wants them, if an actuary can furnish us a reasonable basis upon which to found such a distribution.

Now, we are required at the end of a year, in this loss and gain exhibit which we have spoken of before, to show the sources of profit during the year, and among those sources of profit which will always be shown and never realized unless we dispose of our security—if we are fortunate we generally are able to show quite a large gain in the market value of our securities over cost—is it proposed in this annual dividend scheme that we shall divide every year that theoretical increase in our assets which we might have if we disposed of them, and which we are obliged to show, and as to which we may show large gains and frequently do?

Mr. AMES. I can answer your question. It would require a division of everything above your contingency reserve record. Your contingency reserve would increase—

Mr. BULKELEY. That is another matter which we will talk about later—the contingency reserve. I should have to ask somebody to

tell me what percentage of reserve a company of fifty million to one hundred million or three or four hundred millions of dollars should keep for the protection of its assets against possible fluctuations in market value. I have seen the time, Mr. Chairman, and we have been criticised, some of us insurance men, for what we did in those days, when if we had realized the expectations which certain contingencies that were liable to come from them produced in this country, that the probable decrease in the market value of the securities held by three or four of the large insurance companies of the country within two months would have rendered every one of those companies with large contingency reserves, if you please to call them such, for just such occasions, bankrupt under the theories of the law. It would have absorbed in the great New York insurance companies every dollar and more of their surplus if what was said was believed.

That was one reason, Mr. Chairman and gentlemen of the committee, why, for the protection of their assets, for the protection of the policy holders—I have never had an opportunity to say this before in a public place, and I say it without fear—that it was a solemn duty which we owed in the great emergency which we thought we saw, to contribute in some measure to avert the calamity with which we were threatened; and many of our companies did, Mr. Chairman, contribute in that political campaign; and in my judgment they contributed properly, and if they had failed to do it they would have failed to do a duty which they owed to the corporation of which they had charge, and a duty which they owed to their policy holders in the protection of the assets which they were holding, with which to meet their contracts as they matured.

Mr. DE ARMOND. Would you mind stating what campaign that was?

Mr. BULKELEY. That was what we called the Bryan campaign.

Mr. NEVIN. Of 1896?

Mr. BULKELEY. Yes, sir.

Mr. DE ARMOND. Then you believe that an insurance company, having its policy holders in all the different parts of the country, gathering its funds from all over the country, was authorized, of its own motion, to contribute the money of the policy holders to one party in a political campaign, happening to be the one to which you belong?

Mr. BULKELEY. I do not care which one they belonged to.

Mr. DE ARMOND. I say you consider that as a proper thing?

Mr. BULKELEY. I believe that the protection of those assets, even in a political campaign, was just as much the duty of an officer of the company as it was to try a lawsuit and to employ a lawyer to defend the company against some unjust claim.

Mr. DE ARMOND. Then you think even with a company the majority of whose policy holders were supporting Bryan, that it was proper and right for the officers themselves, without warrant of law or any other authority except their own will in the matter, to contribute to his defeat?

Mr. BULKELEY. If it was against the law I should agree with you. I do not know of any law—

Mr. DE ARMOND. I say without authority of law.

Mr. BULKELEY. I think they have every authority of law.

Mr. DE ARMOND. Can you cite us the authority of law that allows a man handling a trust fund to contribute to a political campaign to carry his party through and defeat the other party?

Mr. BULKELEY. To begin with, sir, I should not consider that we are holding any trust funds.

Mr. DE ARMOND. They are not your funds, are they?

Mr. BULKELEY. They are the funds of the corporation.

Mr. DE ARMOND. Then, you do not look upon——

Mr. BULKELEY. You are under no obligation as a policy holder to the corporation. You simply hold a contract.

Mr. DE ARMOND. I am not asking about that, but I am asking you about those who manage the company. I am not saying the policy holders are trustees for the company.

Mr. BULKELEY. Who are they trustees for?

Mr. DE ARMOND. Is not the company the trustee for the policy holders?

Mr. BULKELEY. Not at all.

Mr. DE ARMOND. It is not?

Mr. BULKELEY. Not at all.

Mr. DE ARMOND. What is the relation? What term would you use in defining the relation or expressing the relation of the company to the policy holder?

Mr. BULKELEY. The policy holder is the purchaser of a contract.

Mr. DE ARMOND. Exactly.

Mr. BULKELEY. And that is all. It is my duty, as the officer at head of any corporation that I have the honor to manage, or anybody else, to protect its funds, in order to enable it to meet its contracts.

Mr. DE ARMOND. I understand you to justify the use by corporations of money in that campaign of 1896 to elect one candidate and to defeat the other?

Mr. BULKELEY. I have not mentioned any candidates at all. I say that it was right to protect their assets in that campaign, as much as it is right for them to protect them in a lawsuit in a court.

Mr. DE ARMOND. By trying to elect one candidate and defeat another?

Mr. BULKELEY. If the other one——

Mr. DE ARMOND. What is the use putting in any "if" to it?

Mr. BULKELEY. I am not.

Mr. DE ARMOND. You are putting an "if" in. I will ask you this question: Do you take the position that it was justifiable or right or honest or decent for the head of an insurance company or any other great corporation to use the money of that corporation in the campaign of 1896, or in any other campaign, to elect the candidate of one party and to defeat the candidate of another?

Mr. BULKELEY. I am talking about the campaign of 1896.

Mr. DE ARMOND. Exactly.

Mr. BULKELEY. I am saying here that I believe that every custodian of great funds had a right to make its contribution in that campaign, as some of them have testified that they did, in New York City, for the maintenance of a principle which they thought was necessary to protect the assets in their charge and to enable them to meet at maturity the contracts with their policy holders.

Mr. DE ARMOND. Will you not answer my question?

Mr. BULKELEY. I think I have fully answered it.

(By request of Mr. De Armond the stenographer read the question referred to, as follows:)

Do you take the position that it was justifiable or right or honest or decent for the head of an insurance company or any other great corporation to use the money of that corporation in the campaign of 1896, or in any other campaign, to elect the candidate of one party and to defeat the candidate of another?

Mr. DE ARMOND. Do you say yes or no to it?

Mr. BULKELEY. I do not say yes or no.

Mr. DE ARMOND. You started out on this business, Senator, and I would really like to know, even if you are a United States Senator, and president of an insurance company—

Mr. BULKELEY. I stated to you, sir, and to this committee, at the outset, that I wished to be treated here as a citizen of the State of Connecticut and not as a United States Senator.

Mr. DE ARMOND. Very well; you are the president of an insurance company and a citizen of Connecticut.

Mr. BULKELEY. Yes, sir.

Mr. DE ARMOND. And you have chosen here voluntarily to give your judgment, totally aside from any matter that is in discussion before the committee, of the propriety of the proceedings of those in charge of insurance companies in 1896 in contributing money belonging to those companies to elect one candidate of a political party and defeat another. You have chosen to do that yourself. Nobody asked you to do it; you volunteered it. I want to get at—putting aside the fact that you are a United States Senator, and merely asking you as a citizen of Connecticut—I would like to get at the standard of morals, political and business, that controls and dominates the company of which you are the head, if that is your idea of the way to handle those funds.

Mr. BULKELEY. The question of morals I do not regard as being involved in the matter.

Mr. DE ARMOND. Evidently.

Mr. BULKELEY. I introduced this subject in connection with the contingency reserves which are provided for, and to explain the situation which, if the gentlemen believed what they said and what they thought, would have rendered bankrupt every one of the companies, in the eye of the law. I maintain that still.

Mr. DE ARMOND. About half of the people in the country apparently did not believe that. Almost half.

Mr. BULKELEY. A majority seemed to.

Mr. DE ARMOND. But a very small one, was it not?

Mr. BULKELEY. Sufficient to give control of the Government.

Mr. DE ARMOND. I understand so. And you have explained largely how it got control of the Government, too, for which I am very much obliged to you.

Mr. BULKELEY. If you will permit me, I have found almost always—if you want to lead me into a political discussion—

Mr. DE ARMOND. I do not want to lead you into it. You led yourself into it, and I want to travel with you a little on it.

Mr. BULKELEY (continuing). That one party or the other, when they happened to have large contributions to their political campaigns, have frequently obtained control of the Government at Washington; and if I have read correctly, within a few months in the publications, the party in opposition to the one to which I belong has only controlled the Government in Washington when their contributions have exceeded those of the other party—more than double.

Mr. DE ARMOND. Well, now, you are in a position to know; let us get at that. If it is not regarded as a question of going into secrets, and is not embarrassing, I would like to know whether the company of which you are the head contributed to the political campaign in 1896?

Mr. BULKELEY. They did.

Mr. DE ARMOND. I would be glad to know whether that company contributed on the occasion when, as you say, the Democrats obtained control of the country?

Mr. BULKELEY. I do not think they did.

Mr. DE ARMOND. What reason have you, then, from your knowledge and experience in the matter, to say that the Democrats obtained control of the country by the means of corruption and purchase, which you have described?

Mr. BULKELEY. I did not say anything like that.

Mr. DE ARMOND. No; you did not use those words, but I am using them—the means of purchase and corruption by which the other party obtained control in the way you have suggested?

Mr. BULKELEY. The information which I possess was kindly communicated to the country and to the newspapers by a distinguished member of the Democratic party in the Senate, and inserted in the Congressional Record at this session of Congress, where I got my information.

Mr. DE ARMOND. Well, then, I will waive the question as to whether it is true or not; I do not know; I am not acquainted with politics of that kind, but if it is true, you justify it?

Mr. BULKELEY. I was making no criticism on the Democratic party.

Mr. DE ARMOND. If it is true, you justify it?

Mr. BULKELEY. I am not making any criticism on the Democratic party.

Mr. DE ARMOND. If the Democrats did that you justify it?

Mr. BULKELEY. I was just alluding to the fact—

Mr. DE ARMOND. I think it is not a fact. You had better call it a rumor.

Mr. BULKELEY. I do not say they bought it. Because you spend money in an election you do not necessarily buy it, my dear sir.

Mr. DE ARMOND. Do you think the election of 1896 was not bought?

Mr. BULKELEY. I do not think it was.

Mr. DE ARMOND. Do you know anything about the amount of money that was used in the effort to buy it?

Mr. BULKELEY. I do not know whether there was any effort made.

Mr. DE ARMOND. You do not?

Mr. BULKELEY. No, sir.

Mr. DE ARMOND. What went with that money that you contributed?

Mr. BULKELEY. I can not tell you, sir. I do not know. I presume it went for legitimate expenses. What those are you know as well as I do. [Laughter.]

Mr. DE ARMOND. May I ask you another question as to the amount of that contribution, if you recollect?

Mr. BULKELEY. What?

Mr. DE ARMOND. The contribution of your company.

Mr. BULKELEY. Certainly. I reported it to the Armstrong committee. Five thousand dollars.

Mr. DE ARMOND. Did you not feel that you were rather small and stingy in comparison with some others?

Mr. BULKELEY. Yes; I thought I should have given \$25,000.

Mr. DE ARMOND. Explain why you did not do it, if you will.

Mr. BULKELEY. That was all I felt like giving just at that time. If I had thought that it had been necessary, as my proportion, to give \$25,000, I should have done so.

Mr. DE ARMOND. Of somebody else's money?

Mr. BULKELEY. No, sir; not of anybody else's money.

Mr. DE ARMOND. It was not your money?

Mr. BULKELEY. It was money in my charge to protect the assets with which I was to pay the claims of that company.

Mr. DE ARMOND. How much money did you give individually in that campaign? Did you give any?

Mr. BULKELEY. I am inclined to think I did. I generally contribute liberally.

Mr. DE ARMOND. You contributed more liberally when you contributed out of the money belonging to the policy holders of your company, did you not?

Mr. BULKELEY. No, sir; I will venture to say that it was a flea-bite.

Mr. DE ARMOND. And the main feeling of regret that you have now is that you did not give more?

Mr. BULKELEY. No; I have no feeling of regret about it.

Mr. DE ARMOND. You have a kind of a feeling of shame, in view of the revelations that have been made recently?

Mr. BULKELEY. I have no feeling of regret, because what I did was a part of the contributions to the great and good results which were achieved in that campaign, according to my theory.

Mr. DE ARMOND. Yes. Now, as the representative of an insurance company and not as a member of the United States Senate, although you are a member of the United States Senate, and as a member of a great insurance company, and its head before this committee and before the country, you justify the giving by the insurance companies of money which does not belong to them for political purposes and political campaigns?

Mr. BULKELEY. Yes. I would not justify giving any money that does not belong to them, but every dollar they have given belonged to them. My dear sir, I have just made a contribution by my company for the relief of the sufferers of San Francisco.

Mr. DE ARMOND. You put these two acts upon about the same footing?

Mr. BULKELEY. Why not? Why should I give to a charity if I can not give for the protection of the means that enable me to give to a charity? I gave to San Francisco for the same reason that I gave in the political campaign—for the protection of my policy holders.

Mr. DE ARMOND. How do you protect your policy holders in San Francisco by giving? Do you give to your policy holders?

Mr. BULKELEY. I do not give to them direct, to each individual; no, sir. I contribute to a general fund, for the general relief of the people of that city, among which are a large class of my policy holders that will participate in the relief; and when I shall save them from suffering, and from disease and death, or contribute to that, I contribute to the good of every policy holder that is associated with them.

Mr. DE ARMOND. May I ask what the contribution of your company was to the San Francisco sufferers?

Mr. BULKELEY. Five thousand dollars.

Mr. DE ARMOND. Exactly the same to the people in that city, that was practically wiped off the map, that was given to carry the election of 1896?

Mr. BULKELEY. The business community was wiped out, and two-thirds of the residence portion of the city is still standing there.

Mr. DE ARMOND. You contributed equal amounts to the two calamities?

Mr. BULKELEY. I did.

Mr. DE ARMOND. The one that occurred and the other that was threatened.

Mr. BULKELEY. And I would contribute \$5,000 more, if I thought they needed it. I would give when I think it is proper, even from my company.

Mr. DE ARMOND. I am very glad, for one, to have your estimate of this business.

Mr. BULKELEY. I am very glad to furnish you the information, sir.

Mr. DE ARMOND. There are a great many people who have believed that, but as far as I know you are the first one that has ever confirmed them in the belief by direct authority about it. Most people have—I do not know what it is; I will not characterize it—but some sort of a feeling that restrains them from admitting that kind of evil doing, and especially restrains them from glorying in it.

Mr. BULKELEY. We do not mind how some people characterize it.

Mr. DE ARMOND. I know that.

Mr. BULKELEY. We do not mind that. All we have to do is to do our duty, and we do it.

Mr. DE ARMOND. And you call that duty?

Mr. BULKELEY. I do.

Mr. DE ARMOND. That is all right. That puts a new duty into the general category.

Mr. BULKELEY. All right. You can put me in any category you please.

I trust the balance of the committee will excuse me for the little side talk we have had on these other questions.

Mr. DE ARMOND. I hope they will be gratified, as I am, to get this new philosophy of the true policy of life insurance.

Mr. BULKELEY. I am not afraid, my dear sir, to go to my policy holders or to go to a commission or to go anywhere, even before a committee of this distinguished body, and to tell what we have done with the money that we have had.

Mr. DE ARMOND. There are people who get so powerful in a financial way that they have no need to be afraid to go where people of smaller means would not dare go, because—

Mr. BULKELEY. Where we have one dollar, or a hundred thousand, you gentlemen down here have hundreds of thousands or millions; and if you disburse it, my dear sir, as honestly as the money of the insurance companies generally is disbursed you will be entitled to the thanks of your constituents and the country.

Mr. DE ARMOND. From what you have said in giving us this information I am satisfied that we will merit those thanks, because we certainly can not do worse.

Mr. BULKELEY. I am pleased with the high opinion that you have. It only verifies the judgment I had of the manner in which you gentlemen are accustomed to perform your duties. Now, Mr. Chairman,

the matter of annual dividends is a matter for the consideration of actuaries rather than for the business end of an insurance company. We believe, however, for the policy holders that a deferred—not too long—but a deferred period will produce more satisfactory results and make a wiser distribution of the earnings of a life insurance company than the short periods of from year to year. In my own company we some years ago adopted a five-year period for the distribution of dividends, and until recently in all our transactions have lived up to that idea, believing it to be the best. We have no objection whatever to an annual distribution, and we think that can be best brought about by encouraging rather than discouraging what we call, or what you may all know is the stock plan of insurance, which gives the insured the benefit, at the inception of his policy and yearly, of the earnings which would be distributed under the forms of a mutual policy—

Mr. ALEXANDER. The New England is a mutual company?

Mr. BULKELEY. Yes, sir.

Mr. ALEXANDER. And your company, the *Ætna*, is a stock company?

Mr. BULKELEY. We have a stock company, but we have within ourselves a mutual department, to which the entire profits to the business from that class of business is distributed to the policy holders. It is a mutual company within a stock company, all the earnings from that class of business going to that class of policy holders in which the stock part of the company have no interest whatever, except to conduct the business.

The Travelers is in the same condition to-day. They issue a form of policy with a guaranteed dividend; not a distribution of the profits of the business, but what they estimate. It may be more or it may be less, but they guarantee a certain dividend in any event. I understand that there is some amendment which I have not seen; it is in the list here, but I have not seen it. It is one of those things in discussing the bill that I do not care particularly to go into, only I think you should be very careful in preparing that code. I want you to understand, in the first place, that I am in favor of perfecting an insurance code for the District of Columbia as nearly perfect in its details as it can possibly be made, and that I think this bill has a foundation from which to work, and that you may be able, if you have the time to give to it, to formulate, with the aid, possibly, of the commissioner or such talent as you may choose to bring in to consult with you, a code, because it is not necessarily very long, and a large part of the detail of this bill, I think, should be avoided.

Mr. ALEXANDER. Senator, do you approve the bureau feature of this bill; the appointment of a commissioner and having a bureau within the Department of Commerce and Labor?

Mr. BULKELEY. Well, that is entirely immaterial, in my judgment; but I take it that the only reason for that was to perhaps dignify—not with any intention to engraft, even apparently, Federal supervision of insurance—but rather to dignify the department, if possible, by having it connected in that way, practically an independent department. I think the commissioner in the present conditions is just as well. Commissioner Drake, are you appointed by the President or by the Commissioners of the District?

Mr. DRAKE. By the Commissioners.

Mr. BULKELEY. The Commissioners of the District appoint the commissioner. If the President appoints the Commissioners, I do not

know why he could not appoint, if he chose, or if this Congress chose to give him the authority, a high officer, the same as he appoints the Interstate Commerce Commissioners or any officials of that character. If it would add any dignity or give apparently a higher character to the office, I can see why it would be quite desirable to put the appointing power in the hands of the President instead of in the hands of the Commissioners. That would not make it a Federal office any more than the Commissioners of the District of Columbia are Federal officers. But for that I have no particular choice.

Mr. AMES. What, in your judgment, would be an adequate compensation for a good commissioner in the District?

Mr. BULKELEY. Well, I do not know. He has no large local companies.

Mr. AMES. For a model department, to make examinations as we provide in this code?

Mr. BULKELEY. He should have anywhere from \$7,000 to \$10,000 a year. You ought not to get a good man for less, because you can not keep him if you do not give him good compensation. If you get a man down here that is a high-class man, and he is not getting the compensation that he should have, some of the fellows will be trying to get him away at the first opportunity, and will do it. We are not losing any opportunities to get the best talent in the country.

There are prescribed here, and the balance of the book is very largely confined to, the standard life insurance policies. Nobody would object, if you chose to have a standard life insurance policy, to having such a policy; but I do not think there should be any law that would prevent a company, possibly with the approval of the insurance commissioner, issuing some other policy than that standard form of policy which the public seems to demand. I do not think there should be a requirement in that bill that when a company has taken to an insurance commissioner and asked his approval of a form of policy which they have ingeniously invented, that it should consequently be permitted that every other company should use it, or that it should then form a standard policy which every other company should issue. I think they should have the advantage of it. If they have had the courage and independence and the knowledge and ingenuity to develop some scheme of insurance, peculiarly their own, I think they are entitled to that. I have no objection to the standard policy, providing there is some provision for protecting companies in developing plans.

The whole business, the present simple incontestable forms of policies have been the growth of forty or fifty years' experience, and they have engrafted on all these policies these schemes for extended insurance, for loans, for cash-surrender values, and everything of that character that has tended to make it easy both to get in and to get out of a life-insurance contract. The great cry for many years was that there was no way to escape after they had once entered into a contract with a company. It has been the study of our actuaries and of our managers for years to devise an easy way, if through any cause, misfortune or otherwise, a man was unable to pay his premium, whereby paid-up values would be provided for, and, as I say, extended insurance and loans and various devices of that sort to accommodate the necessities of policy holders. And the ingenuity of the companies will be tending always in that direction, unless you strive to and do curb them by law from extending from time to time the benefits which

the business warrants and which they see they can properly and without danger accord to their policy holders.

I am much obliged to you, gentlemen, for the time you have given me, and I want to assure you that from the Connecticut companies you will have hearty cooperation and encouragement in formulating for the District of Columbia, which is under your government, a law which will redound to the credit of the men that are engaged upon it and do produce it, and which will not be very burdensome upon the corporations which you expect to do business under it.

Mr. DE ARMOND. I would like to ask you a question. In getting up that model code would you incorporate a provision forbidding contributions to political parties by insurance companies?

Mr. BULKELEY. I have no objection whatever, sir, to it. We shall live up to the law, whatever you make it.

Mr. DE ARMOND. That is not an answer to my question. You are advising about making a model code.

Mr. BULKELEY. I have no objections to inserting such a provision.

Mr. DE ARMOND. That is not advice; that is consent. I ask whether, in making a model code, you would incorporate a provision of that kind?

Mr. BULKELEY. If I was going to make one, no.

Mr. DE ARMOND. Would you incorporate a permission, an express permission, to make such contributions?

Mr. BULKELEY. I do not think that is necessary, so I would not do it.

Mr. DE ARMOND. You would not do it?

Mr. BULKELEY. No.

Mr. DE ARMOND. You would just leave it as it is?

Mr. BULKELEY. I would.

Mr. DE ARMOND. So far as that feature is concerned?

Mr. BULKELEY. I would leave it to the good judgment—and you would usually have good judgment—of the managers of those corporations in the protection of the policy holders' interests.

Mr. DE ARMOND. As to that feature, you think the model has really been reached in what you advocated a little while ago?

Mr. BULKELEY. I think it has been reached in what I have just said, that I would leave it to the judgment, and it will usually be good—even if it has been bad in my instance, in your opinion—of the managers of the 30 life insurance companies and the 100 or 200 fire insurance companies of the country, in the protection of the best interests of the policy holders that are intrusted to them.

Mr. DE ARMOND. I understand, then, that the course of these companies in 1896 was a model?

Mr. BULKELEY. I did not say anything of that kind.

Mr. DE ARMOND. Was it, or was it not?

Mr. BULKELEY. I did not say anything of the kind. I have said what I would do.

Mr. DE ARMOND. We are talking about making a model law.

Mr. BULKELEY. I say as far as I am concerned I would not put it in; and I would not put in any license for them to do it.

Mr. DE ARMOND. Then one reason you would not put it in, if you are making a model law, is because that part is all right—that is, the model?

Mr. BULKELEY. That was the reason that you put in. I did not say that.

Mr. DE ARMOND. Ordinary men, who are not presidents of insurance companies, or members of the United States Senate, can generally answer an ordinary question without quibbling about it.

Mr. BULKELEY. We are all ordinary men.

Mr. DE ARMOND. Some of us are very ordinary.

Mr. BULKELEY. I find that often in both branches of Congress we find some very ordinary ones.

Mr. DE ARMOND. There is no doubt about that. We have had a demonstration of that.

Mr. AMES. I should like to call your attention to section 25, which I think the committee has been misled about. As amended, or as proposed to be amended, that will permit your companies to do business, for it refers only to mutual companies.

Mr. BULKELEY. I see no objections to it, only I do not see any reason why a mutual company should not issue a nonparticipating policy.

Mr. AMES. On that subject, did not your company get into litigation some time ago, and was it not found by the courts that the stock company had issued its policies at such low rates that the mutual part of your company had to make good to the stock end of it?

Mr. BULKELEY. No, sir.

Mr. AMES. And the stock end had to turn money over to the mutual end of it?

Mr. BULKELEY. No, sir.

Mr. AMES. Or was it the reverse?

Mr. BULKELEY. Neither.

Mr. AMES. All right, then; I have been misinformed.

Letters from officers of Connecticut insurance companies, publication authorized by the chairman as part of address of Mr. Bulkeley, follow:

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY,

Hartford, May 14, 1906.

HON. MORGAN G. BULKELEY,

United States Senate, Washington, D. C.

DEAR SIR: Accept our thanks for your message of Saturday as to presentation of our views upon the amended Ames bill. We beg to confirm our early announcement of to-day, that we should express our views briefly in a later telegram, and also to confirm our telegram in this behalf of the following tenor, to wit:

"Amended Ames bill received Saturday. No time offers for full statement of our views. If they may be made known to the committee through your good offices, they are these, very briefly expressed:

"We assume the bill seeks to establish an insurance code for the District of Columbia which may serve for a model for the States, and thus lead to uniform insurance legislation. It must therefore be a code acceptable to the several States, if they entertain its adoption, and acceptable to the companies, if they elect to do business in the District of Columbia.

"We favor any legislation which will relieve policy holders from the increasing and intolerable burden of taxation of their franchises, reserves, and premiums for general State purposes or which will give to their interests any protection already covered by existing laws, if properly enforced.

"In our judgment, no State will accept or adopt this bill in its present form in lieu of its own insurance code. It stands squarely across vested corporate rights, powers, and privileges, which have well served for a half century in some cases, and it would compel their abrogation through charter and statutory

amendments, which no State will willingly grant, and no company with a due regard to its members' interests will seek.

"The bill is crude and contradictory in some of its provisions and inequitable and uncalled for as applied to the conservative companies, who are guilty of no wrongdoing and whose management is entirely satisfactory to their policy holders.

"If enacted in its present form, we would be compelled to withdraw from the District of Columbia, and we shall not stand alone in that necessary action.

"The bill is a hotchpotch of the 'Armstrong bill,' so called, in New York, enacted to reform manifest evils at home, and other provisions. It is only dignified by hasty executive sanction and by reference to a committee of the Congress, possibly as an introduction to sane, safe Federal legislation at some time, when one of the greatest interests of this country, touching the welfare of 20,000,000 of its people, can receive the calm, intelligent, and impartial consideration and treatment it demands and deserves.

"The bill does not bear even the indorsement of the Chicago convention, which gave it impetus. The whole matter was postponed for discussion and action at the convention of insurance commissioners next September.

"It is admitted that the Ames bill is imperfect and inadequate, and requires material amendment, in Mr. Drake's report accompanying the President's special message.

"Massachusetts, Ohio, and Iowa postponed all legislation on insurance for further study and deliberation.

"This is no time for hasty, impolitic, and radical legislation; and this suggestion finds emphasis and force in the resolution of Representative Esch, referred to the Committee on Rules, to consider the subject of Federal insurance legislation.

"The advantages claimed to result from the passage of this bill are absurdities. For instance, that the new department examinations and reports will replace those of the State officers, and that taxation will be abolished, and also the cost of compulsory advertising in the newspapers.

"The bill is in direct conflict with the laws of our own State, and the provisions of the charters granted by Connecticut to its own companies, and which neither the State nor the companies will forego, qualify, or sacrifice, unless for controlling and satisfactory reasons, and especially since its companies have had no share in the iniquities of management which have caused the present agitation, and which can not be cured by legislation that is enacted in haste and in ignorance of vital facts.

"Other practical objections we shall make note of later."

I have treated this matter, as you will note, entirely from its general aspects, and have left the discussion of particular features of the bill, or sections, to a later date, save that I am now inclosing herewith certain practical objections noted by our actuary, Mr. Daniel H. Wells, on the original bill, and which I presume apply as well to the amended bill; and our legal adviser here, Mr. Lucius F. Robinson, will make a study of the amended bill and forward to you his comments thereon, if you deem it expedient at this time that we enter upon further consideration of this measure, and upon this point we shall be very thankful for your advice.

Regretting very much my inability to be in Washington this morning, owing to my engagements, especially one that takes me West to-morrow for about two weeks, and with many thanks for your welcome suggestions and for your courtesy, which we most thoroughly appreciate, I am,

Respectfully, yours,

JOHN M. TAYLOR, *President.*

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY,
Hartford, May 8, 1906.

MR. JOHN M. TAYLOR.

*President The Connecticut Mutual Life Insurance Company,
Hartford, Conn.*

DEAR SIR: In accordance with your request I have run over somewhat hastily the so-called Ames bill, No. 17760, of the House of Representatives.

It is perhaps worth while to quote a couple of paragraphs from the letter of April 14 of Thomas E. Drake, superintendent of insurance for the District of

Columbia, to the President as illustrating the absurdity of some of the expectations or professed expectations of those urging the bill.

"Third. The result of his examinations of foreign and domestic companies will no doubt be accepted in time by the various State insurance departments, thereby saving the cost to insurance companies of numerous examinations and the accounting also to forty-odd insurance departments.

"Fourth. It will abolish taxation on insurance premiums for revenue; also the arbitrary advertising of the companies' annual statements in newspapers and trade journals," etc.

The bill is in large part copied from the bills introduced by the Armstrong investigating committee in the legislature of New York, and, thus copying them, introduces some absurdities which the originators do not seem to have taken the time and trouble to eliminate. Thus on page 8, lines 19, 20, and 21, we read, it being in the "Form of return of life-insurance companies:" "A statement of any certificate issued by the superintendent extending the time for the disposition thereof;" but nowhere in the bill do I find any other reference to any such certificate by the superintendent. Also, on page 42, lines 20 and 21, is reference to "a contingency reserve not in excess of the amount prescribed in this act," but nowhere in the bill as printed does there appear any other reference to any contingency reserve, although Mr. Drake says this "was inadvertently omitted by the printer."

The bill undertakes to legislate for all companies and for the business of all places. It says, page 3: "All foreign insurance companies, as a condition of transacting any business of insurance within the District of Columbia, shall be subject to the provisions of this act," and many of the sections have reference directly to all life-insurance corporations doing business in the District of Columbia. Thus sections 34 to 43 deal with matters covered by our charter and the laws of our own State and in many respects are in direct conflict with such charter or laws. Thus it is provided in section 34, page 36: "That every mutual life-insurance company organized or authorized to transact business in the District of Columbia shall classify its trustees, directors, or governing board so that the terms of at least one-third of the members thereof shall expire each year," while under our charter the terms of only one-fourth of our directors expire each year. Again, in section 35, it provides "That each policy holder of any such company shall be a member thereof," while under our charter persons insured under nonparticipating policies are not members. In section 36 it provides that certain members shall not be eligible as directors; in section 38, for cumulative voting, and in section 43 that, under certain conditions, certain members shall not be permitted to vote at the annual meeting of a company.

The bill provides standard forms of policies, substantially copied from the forms proposed by the Armstrong committee prior to their amendment by said committee, and, so far as my opinion is concerned, I would not hesitate to withdraw from the District of Columbia, or from any State, in preference to the adoption of such forms. Thus the forms provide, page 52: "The company at any time will advance upon the sole security of this policy, at a rate of interest not greater than — per centum per annum, a sum not exceeding the amount specified in the table of loan values herein set forth after deducting therefrom all other indebtedness to the company. Failure to repay any such advance or interest shall not void this policy unless the total indebtedness to the company shall exceed the aggregate of the net value of the policy and of all additions thereto and all dividends, and accumulations and notice shall have been given by the company, as prescribed by law;" and this is one of the many objectionable and absurd features of the proposed forms.

The bill provides that "Every insurance company doing business within the District of Columbia shall annually, on or before the fifteenth day of January, file in his office such annual statement exhibiting its condition on the thirty-first day of December of the previous year and its business of that year. For cause the commissioner may extend the time for such filing, but not to a later date than the first day of March." On page 113, section 95, the bill provides "That a company which neglects to make and file its annual statement in the form and within the time provided by section nine shall forfeit one hundred dollars for each day during which such neglect continues." It does not need to be said that it is impossible to file the statement with the various States by the 15th of January, and that unless we think to ask for an extension, and the commissioner sees fit to grant it, we are liable at any time to subject ourselves to the penalty named in section 95.

On page 16, lines 4 and 5, preliminary term policies and a preliminary term valuation are recognized in the law.

The bill forbids mutual companies to issue nonparticipating policies, and does not even except annuities.

I have not attempted to point out many of the absurdities in the bill. Thus, in section 47, in regard to the distribution of dividends, it is provided that the aggregate amount of all divisible surplus "shall be equitably apportionable to all policies issued on or after the first day of January, nineteen hundred and —," and the company "shall ratably apportion such amount to said policies." Taken literally this would forbid the payment of any dividends under any policy issued prior to the date named.

Hoping that these suggestions may in some degree serve your convenience, I am,

Respectfully, yours,

D. H. WEBB, *Actuary.*

PHOENIX MUTUAL LIFE INSURANCE COMPANY,
Hartford, Conn., April 28, 1906.

HON. M. G. BULKELEY,
United States Senate, Washington, D. C.

DEAR SIR: I duly received yours of the 23d and have looked over rather hastily the report and bill which you sent me.

I am sure that the plan of framing a law for the District of Columbia which shall be a model for the various States, and thus result in uniform legislation, is a project which will commend itself to the people generally and to the insurance companies especially. But if a law shall be passed by Congress which can only be effective in the District of Columbia, while it may at the moment gain the thoughtless applause of those people who do not realize that insurance as a whole has been conducted wisely and fairly, and has been of great service to the people, and that great interests have been placed in the hands of the managers of these companies which they can not neglect, and if as a consequence many of the better companies should feel it necessary to withdraw from the District of Columbia rather than imperil the interests of their institutions, then the law will fail of its purpose.

As this bill now stands I do not think that this company would be willing to subject its policy holders to certain perils and inequities which would result from a compliance with its provisions. There are some manifest errors in the bill, which no doubt have been the result of oversight rather than of intention, but there are some principles which I do not think the most liberal and conservative companies in the country would agree to.

I do not see, for instance, what excuse the District of Columbia, or any State other than the one in which it is located, would have for dictating the method by which a mutual life insurance company should elect its directors, and it seems to me that there are distinct dangers in the plan proposed in this bill without any corresponding advantages.

The annual distribution of dividends is also, I think, an attempt to take from the managers of a company certain responsibilities which should be placed upon them.

Forms of standard policies do not seem to me likely to produce that liberality and equity which is so important in the management of an insurance company.

In all these matters I feel quite strongly that the managers of insurance companies are much better qualified to frame laws than those who have had but little experience in the practical working of this business.

Very truly, yours,

JOHN M. HOLCOMBE, *President.*

THE TRAVELERS INSURANCE COMPANY,
Hartford, Conn., May 7, 1906.

HON. MORGAN G. BULKELEY,
President Ftna Life Insurance Company, Hartford.

DEAR SIR: Some days ago you sent me a copy of the Ames bill, requesting comments thereon.

After reading it I requested Mr. Messenger to discuss it from his point of view as an actuary. Upon reviewing his comments, I find that he has not only done so, but has also covered some points I expected to write about. M—

Bro Smith tells me that he also has written or expects to write, so that these gentlemen have left me little to say. I can add little more than the following:

If it is expected that this bill will be used as a model for the legislatures of various States, I should say section 21 ought to be so amended as to make it perfectly clear that no company having the right under the charter of its own State to do life, accident, and liability business should be excluded from either class by the legislation proposed.

The returns required seem to be unnecessarily particular. To furnish all the details required by section 9 would make it almost necessary to file copies of all the entries for the year and would furnish neither the department nor the public with information of value in determining the real condition of the company.

Section 25 clearly prohibits a stock company from issuing both participating and nonparticipating policies. I do not object to the restriction in the same section that mutual companies shall do no other than mutual business; but it would be better, I should think, to permit stock companies to do both classes of business, with suitable provisions for the protection of participating policy holders. The section as it now stands permits stock companies to do participating business. If a stock company can do that kind of business with propriety at all, which nobody denies, it is extremely difficult to see how that business is placed at any disadvantage by writing stock insurance also, provided the policy holders of both classes are properly protected, which it is easy enough to do by separate accounts, and separate investments and statements also, if necessary.

The provision for the election of directors by mutual companies permits cumulative voting. Unless like provision is made in the charters of the several mutual companies, I should think it would be impossible to comply with both charter and act of Congress. If the Connecticut Mutual and the Phoenix conduct their annual meetings according to their charters, which do not allow cumulative voting, they would thereby be excluded from transacting business in the District of Columbia if the Ames bill should pass in its present form.

In the foregoing requirement, which illustrates many others, the bill either does not go far enough or it goes too far. It is midway between an act for the control of insurance companies by Federal authority and an act for the regulation of insurance for the District of Columbia. While it does not purport to be an act for complete Federal regulation, it nevertheless encroaches substantially upon the authority of the States to regulate the corporate organization and government of their own corporations. If it were the purpose of the framers of the bill to use it as the beginning of a system of Federal control, it would have been better for them to go about it frankly and directly. Instead of indirectly disguising the regulation of such domestic and internal affairs by the mask of requirements to be complied with to qualify companies for the transaction of business in the District of Columbia.

Such other comments as I might make upon the bill would require so much time and space and add so little to what you already have that I will spare you.

Sincerely, yours,

S. C. DUNHAM, *President.*

[Memorandum for the president.]

ACTUARIAL DEPARTMENT, *May 4, 1906.*

H. R. 17760. A bill regulating the business of insurance within the District of Columbia, introduced by Mr. Ames.

First. This bill places no restrictions on the amount of life business which a company shall issue, on the amount of commissions to be paid to agents, on the total expenses of the company, or upon the expenses during the first year.

Second. This bill makes no provision for substandard insurance unless the latter part of section 54, on page 80, which provides for policy forms, in addition to the four standard forms, to be submitted to the commissioner for his approval, is considered a provision for substandard insurance.

Third. This bill does not provide for restrictions of liability by reason of travel, occupation, change of residence, or suicide, except for one year. I suppose this means that if we take a freight brakeman we can protect ourselves only for the first year.

Fourth. This bill does not provide for any cash surrender value on the policy, except in the indirect way of providing a loan value. The insured can take out a loan on the policy, paying interest for one year, and then stop payment of premiums and interest on the loan and not pay off the loan. The company's only remedy is to cancel the policy, and in an indirect manner the insured gets the loan value as a cash surrender value on the policy.

Fifth. It is not perfectly clear to my mind whether this bill will permit this company to do the different kinds of insurance which it is carrying on at the present time. Portions of the bill bearing upon this question are section 2, commencing at the bottom of the second page; section 21, commencing at the bottom of page 23; the third paragraph of section 22, on page 26, and section 76, on page 104.

Sixth. Section 9, Form A, "Form of return of life insurance companies," commencing on page 8, calls for detailed reports of a completeness and minuteness which will mean a great amount of work and a considerable expense if fully carried out, and which, upon the whole, is of such a serious character as to make it desirable to avoid a good share of the requirements. While there is no objection to giving reasonable information, this section calls for much that is unnecessary and much that will never be seen after being handed in to the department. These requirements will be considerably simplified and lessened in the case of a company doing nonparticipating business only.

Seventh. This bill requires that dividends shall be paid annually on all participating policies, and that every such policy shall receive a dividend each year for which premium has been paid. This means that the usual practice of paying a dividend only in case the premium for the next year is paid is to be done away with. All policies on which the premium is paid for only the first year and which then lapse are entitled to a dividend at the end of the first year just as much as policies which are continued in force. This will mean that annual dividend participating policies will make a much better net showing for the first few years than heretofore, while policies after they have been in force quite a number of years can not make nearly as good a showing. All those policies which lapse at the end of the first year and formerly received no dividend at all will now receive one dividend. All those policies which lapse at the end of the second year, and which probably formerly received one dividend only, will now receive two dividends, etc. This means that a great many more dividends will be paid, particularly in the earlier years, which must necessarily considerably reduce the dividends on those policies which continue a long time in force.

Eighth. This bill provides for paid-up and extended-term insurance on the standard term policies. The amount of paid-up insurance and the length of the term in extended-term insurance which the reserve on the term policy will purchase is so small that this provision seems to be almost ridiculous.

Ninth. The bill provides that no company can do both participating and nonparticipating business. This provision is not only reasonable, but desirable, and it seems more than probable that if this bill does not become a law at least this restriction of life companies to either the participating or nonparticipating business will be insisted upon by a number of the States.

Tenth. In section 4, which outlines the standard policy forms, the option on surrender or lapse gives paid-up or extended-term insurance on the basis of the full reserve. This to my mind is altogether the most serious feature of the bill. It is wholly unjust, wholly unscientific, and directly antagonistic to the life-insurance idea. It is wholly unjust because it requires the company to give a paid-up value greatly in excess of the accumulations on the policy, even upon the assumption of the reduction of expenses of the first two years to a point which all would recognize as being exceedingly moderate and reasonable. It is unscientific because it assumes that the accumulations at the end of the second year have approached as nearly to the full reserve as at the end of the tenth or twentieth year. It is directly antagonistic to the life-insurance idea because it acts as a great inducement for the insured at the end of the second year to fake out a paid-up policy on account of the unreasonably large value given.

Below is given a table comparing the paid-up insurance now given by the Travelers with the proposed value which would have to be given according to this bill at the end of the second and third years for the ordinary life, twenty-payment life, and twenty-year endowment policies—both participating and nonparticipating—for ages 30 and 50. For the end of the third year the ordinary life paid-up values will have to be largely increased, but for the twenty-

payment life and twenty-year endowment the values can be materially decreased, so that the one about neutralizes the other. But for the end of the second year the required values under the bill are away beyond reason. For instance, on the ordinary life participating policy, at age 30, we are now giving \$32; the new bill requires \$51. On the ordinary life, nonparticipating, age 50, we are not giving any paid-up insurance; the new bill calls for \$93. Within parentheses, below the Travelers regular paid-up values, are given for age 30 the figures showing the paid-up insurance which the actual accumulation will purchase, and this will be seen to be very much less than the value required by the proposed law.

Comparison of paid-up of Travelers, participating and nonparticipating, with the value obtained by allowing full net value, and Travelers present single-premium rates according to the Ames bill.

SECOND YEAR PARTICIPATING.

	Ordinary life.		Twenty-payment life.		Twenty-year endowment.	
	Travelers value.	Proposed value.	Travelers value.	Proposed value.	Travelers value.	Proposed value.
Age 30	{ \$32 a 32 }	\$51	{ \$75 a 73 }	\$97	{ \$75 a 87 }	\$107
Age 50	{ 52 }	71	{ 75 }	91	{ 75 }	100

SECOND YEAR NONPARTICIPATING.

Age 30	{ None. a \$20 }	\$48	{ None. a \$54 }	\$98	{ None. a \$72 }	\$105
Age 50	{ None. }	78	{ None. }	98	{ None. }	101

*Paid-ups purchased by Travelers single premiums at end of two years.

It will be seen from the above tables that the paid-up values required by this bill for nonparticipating business are practically the same as for participating business, and if the participating single premium is not decreased, and yet is considered upon a $3\frac{1}{4}$ per cent basis, we will have the absurd result of giving much larger paid-up values on the nonparticipating than on the participating policy. The only remedy, unless the law is modified, will be to advance the nonparticipating single premium to a figure which would be, for many reasons, very objectionable.

To summarize the objections to this bill, paying attention to those features which seem to come within the province of the actuary, and arranging them in order of their seriousness, we have, first, a paid-up surrender value at the end of the second year based on the full reserve. This is the worst feature of the bill, and can not be justified on any ground. Even from the standpoint of the policy holder it robs the other policy holders for the benefit of those who surrender their policies at the end of the second year. This company should see to it that the strongest representations of the situation are made before the Congressional committee.

Second. The requirements in regard to statements and reports to be made to the commissioner. These are so burdensome that they are highly objectionable on account of the great amount of work required and the necessarily great expense.

Third. No provision for substandard insurance or for extra hazards is made except by the limitation which runs out at the end of the first year.

Fourth. Paid-up and extended term insurance on term policies.

NOTE.—The option in the standard policy, according to this bill, as stated at the top of page 53, is rather indefinite, and possibly it will be interpreted to mean that at the end of the second year the policy may be surrendered for a paid-up policy purchased by the full reserve on the basis of the net single premium instead of the company's gross premium. If this is the case, this feature of the law will be very much more objectionable than stated above.

H. J. MESSENGER, *Actuary.*

THE TRAVELERS' INSURANCE COMPANY,

Hartford, Conn., May 12, 1906.

HON. MORGAN G. BULKELEY,
Senate Chamber, Washington, D. C.

DEAR SIR: I beg to submit the following criticisms of bill H. R. 17760, introduced by Representative AMES, of Massachusetts:

1. Section 1, line 7: The words "except fidelity and surety companies" should be stricken out. Fidelity and surety companies are included with other insurance companies under the laws of New York, Massachusetts, and other States, and I can not recall any good reason why they should be excluded under section 1 of this bill, particularly when they are included under subsection 4 of section 21, as forms of insurance for which domestic companies may be incorporated.

2. Section 1, lines 4, 5, and 6, on page 2: The definition of "net assets" should not be limited to the funds available for the payment of the obligations of the company within the District of Columbia.

3. Section 2 should exempt foreign companies from compliance with section 26 and other sections of the bill which are regulative of domestic corporations. The language in the last sentence of section 2, "All foreign companies as a condition of transacting any business of insurance within the District of Columbia shall be subject to the provisions of this act," is too broad.

4. Section 8, lines 22 and 25, page 5, and lines 1-21, page 6: It is proper that the commissioner of insurance should be authorized on his own initiative, or at the request of the insurance superintendent or commissioner of any other State, or at the request of the company to be examined, make an examination of any company authorized to do business within the District of Columbia, but what power has Congress or any of the insurance officials of any State in the Union to authorize the insurance commissioner of the District of Columbia to examine a foreign insurance company not doing business within the District? If it is a purpose of this bill to establish Federal supervision, it seems to me that purpose should be accomplished by unequivocal declaration.

5. Section 10, page 15: It would be better to separate the provisions of this section by distinct section numbers, so that the provisions for the computation of the net value of insurance upon lives shall be stated in one section and the provisions for reserves for companies other than life in another section. The paragraph in relation to insurances other than life, whether retained in the present section or separated, should also include a provision for a liability reserve in addition to the unearned premium reserve, and this additional liability reserve should be based upon the experience of the companies along the lines of the laws passed in 1905 by the States of New York, Massachusetts, Connecticut, Illinois, and California.

6. Section 13, page 18: Unless the existing laws of the District of Columbia regulating the service of process upon domestic insurance companies are sufficient, this section should include a provision for such service. Furthermore, the section should be amended with relation to foreign insurance companies so as to authorize service of such process upon the commissioner as the attorney for that purpose of the foreign company and to exclude all other methods of service of process upon foreign corporations. Subsection 3 of section 75 calls for the appointment of the insurance commissioner as the attorney for the service of process upon the foreign corporation, but does not obviate the criticism above suggested. As this bill is held out as a proposed model, it should be made as nearly perfect as possible in this and all other respects.

7. Section 15, line 7 and 8, page 20: The words "such violation has been committed, or whether" should be stricken out. In their present connection they are without meaning and confuse the sense, and all of the grounds upon which the commissioner may act, as set forth in lines 7-15, inclusive, on page 19, are substantially repeated in lines 8-12, on page 20.

8. Section 19: The charges and fees provided in this section, while they correspond with present statutory requirements of a number of the States, are unreasonable and illogical. Why should \$30 be charged for filing a charter and \$10 for amendment to a charter, or \$50 for filing valuation of life policies made by the insurance official of one of the States, when only \$20 is charged for filing the annual statement? The fees as stated in the bill as between themselves are out of all proportion to the amount of labor which an examination of the various papers will impose upon the commissioner. A better plan would seem to be to enlarge upon the idea incorporated in the insurance law passed by the State of Virginia last winter—to omit all direct charges for receiving and filing papers and issuing certificates, and to provide for the apportionment of the cost

of maintaining the department between the companies doing business within the District upon the basis of premium income.

9. Section 20, lines 21-23, page 26: This provision should be modified. There is no good reason why companies which are authorized by their charters to issue contracts of life, accident, and health insurance, should not be permitted to include in one contract insurances upon life, against accident and against disability from sickness, either with or without the statement of separate and noninterdependent premiums.

10. Section 23, lines 19 and 20: The words "subscribers to the agreement of association shall hold the franchise until organization has been completed" might well be stricken out, and the words "In the case of a company organized upon the stock or temporary stock plan" inserted in lieu thereof. It is not easy to appreciate that there can be a "franchise until organization has been completed."

11. Section 25: It is proper that a mutual life insurance corporation should be confined to participating life insurance, but is there any valid reason why a stock life insurance corporation may not issue both participating and non-participating policies of life insurance? A mutual company which guarantees results to one class of members or policy holders by nonparticipating contracts does so at the expense of the mutual members or policy holders, who are, from the very nature of the organization, entitled to share in all the profits. A stock company, however, may with entire propriety guarantee by the capital and assets of its stockholders to one set of policy holders results under non-participating contracts of insurance, and to other sets or classes of policy holders agree to give participation in the profits which may be earned in such sets or classes. Of course, if the principle enunciated in this section is to be followed by the various States of the Union, and the stock companies and mutual companies confined, respectively, to nonparticipating and participating insurance, the stock companies may so adjust their affairs as to make compliance, and, likely, with very good results. My criticism is directed particularly against the idea that there is any principle behind the proposition that a stock company may not write both kinds of life insurance.

12. Section 26: Would not this section be improved by substituting therefor the provisions of our own Connecticut General Statutes, as found in sections 3562-3568? I do not recall any other statutory regulations for the investments of life insurance corporations at all comparable with those of Connecticut. Subsections 8 and 9 make provisions for investments of a character that have not heretofore been considered as the most desirable for life insurance corporations, but it is likely that a depositor in a national bank, or even a savings bank, will transfer his deposit and deposit book as collateral security for the repayment of a loan not exceeding one-half of the amount which he might withdraw from the bank? If by "capital," as used in subsection 9, is intended the entire assets of the company, and not the incorporation capital as represented by the stock, quite a considerable amount of money might be invested upon what are really negotiable and nonnegotiable indorsed papers; in other words, this subsection would authorize an insurance company to do a banking business.

13. Section 29: A more orderly place for the first sentence "That such company shall not engage in any business other than as specified in its charter or agreement of association, and as previously authorized by law" would be at the end of section 22.

14. Section 75: The same criticisms and suggestions concerning fees and charges under section 19 apply to the fees and charges provided for by this section.

15. Section 76: It would appear to be the intent of this section that foreign corporations may be authorized to transact within the District of Columbia the different kinds of business authorized by their charters in excess of the limitations imposed in section 21 upon domestic corporations, provided the capital stock is equal to the aggregate required of domestic companies, but the proposition might be stated with more clearness, so that no question may be raised as to the authority of companies like the *Etna* and the *Travelers* to issue within the District of Columbia the various kinds of insurance upon and pertaining to life and accident to persons which are authorized by their respective charters.

16. Sections 89 and 91: There appears to be a little confusion in terms or ideas in these two sections.

My suggestions, so far, relate to what appear to be defects in particular matters, assuming that the bill as a whole will receive favorable consideration,

and some of these particulars may not be of vital importance, but I do believe that the bill in its general form—if it is to be favorably considered and to be made use of as a model, so as to secure uniformity in the statutory regulations of the business of insurance—should be reconstructed so as to state tersely and more accurately the provisions applicable to insurance companies generally, and then in subdivisions in due order regulations for both foreign and domestic corporations engaged in life, different forms of casualty, and fire and marine business. In this connection, the bill which is being prepared by the Board of Casualty and Surety Underwriters as the basis for the casualty division of a model insurance code, and like bills which I understand are being prepared for the life and marine and fire departments of underwriters, might be considered with profit by the committee having the Ames bill in charge.

As President Dunham and our actuary, Mr. Messenger, have submitted views concerning the actuarial and policy form features of the bill, I have refrained in these respects, and regret exceedingly that I must trouble you with so long a communication.

Very truly, yours,

WM. BROSMITH, *Counsel.*

ÆTNA LIFE INSURANCE COMPANY,
Hartford, Conn., May 12, 1906.

HON. MORGAN G. BULKELEY,

President, 2017 Twenty-second street NW., Washington, D. C.

DEAR SIR: I have received the amended Ames bill this morning and hasten to meet your wishes, as far as possible, by inclosing herewith suggested amendments.

The first, on page 14, is to give us more time for making our annual statement. Now, a considerable number of States give us until March 1, and none of them require the statement before February 1. January 15, as provided in the bill, is too short a time.

The amendment suggested on page 26 is for the purpose of enabling us to do life, accident, health, and liability insurance in one company.

The amendments on page 42 are suggested for the purpose of enabling us to continue the five-year dividend plan, which I still believe to be vastly better than to make the annual dividend plan compulsory; not so much from the Ætna's needs as from the standpoint of the public and from that of the many smaller and weaker companies that will be likely to weaken themselves in the effort to compete with the older and stronger companies in the matter of annual dividends, and will also be tempted to take of the surplus earned under older policies for the purpose of making an attractive showing under policies more recently issued.

On page 43 I have suggested eliminating the provision for the surplus or dividend to be applied to the payment of any premium upon the policy or the purchase of a paid-up addition thereto, because if the dividend is required to be applied to the payment of the premium the time when the policy ceases to be in force will be indefinite and disputes will arise on that account; and, also, after a policy may have been in force for a considerable time by virtue of this application of the dividend the insured will be sure to come around and expect the payment of the entire dividend in cash, and that will occasion dissatisfaction and dispute. It is also objectionable to apply the dividends to the purchase of a paid-up addition to the policy, because it enables the insured to secure additional insurance without a medical examination, which is an injustice to other policy holders.

The same reason applies to the suggested amendment in line 18.

On page 47, line 9, the suggested amendment is for the purpose of determining whether the insurance shall go to the wife or the children, which, in the language of the bill, is somewhat indefinite, or at any rate the bill would seem to provide for payment of the sum insured in part to the children when the policy does not name the children, and when it was the intent of the insured to make it payable wholly to his wife. The language suggested accords with that in the present Connecticut law.

In line 15, on the same page, I suggest eliminating all reference to giving with the policy a copy of the medical examination, which is not a part of the contract.

On page 48 I have suggested eliminating section 54, because it is impossible to define in a few words the character of a life insurance contract, including its dividend periods and other peculiarities, so that the holder thereof shall

not be liable to mistake the nature or scope of the contract. Any effort would, it seems to me, be more likely to result in a misunderstanding of the contract than if the insured is left with the idea that he should read the whole instrument, because in that way alone can he obtain a correct idea of its contents.

Section 55, on page 48, requires the use of standard policies only in the District of Columbia, and I wish that section might be wholly eliminated. However, if the standard form is to be provided, I can see some objections which ought to be corrected, and doubtless there are others which will disclose themselves upon a more careful examination than I have had time to give it. In the first place, that law provides for participation in every policy, and as the bill now reads would not enable the company to issue a nonparticipating policy.

The amendment which I have suggested to page 51, line 11, would seem to cover this objection.

On page 50, line 3, I have suggested changing the words "legal representatives" to "executors, administrators, or assigns," because it has been found that the interpretation of "legal representatives" has a different meaning in different States and has been decided differently in some of the courts. In some States I think "legal representatives" has been construed to mean "wife and children," and in other States the "executor or administrator." The words "executors, administrators, or assigns" would be much more satisfactory, and avoid some disputes.

The suggestion on page 52, line 4, is for the reason above explained, that dividends should not be applied to purchase paid-up additions at any rate without a medical examination, and I think the provision that the dividends may be withdrawable in cash will be simpler and more satisfactory to both parties; but on page 53, line 17, the policy provides that if the policy has lapsed the dividend shall be applied to purchase temporary insurance. I suppose it is well enough to let that provision remain. As the bill now reads there would be a slight conflict in the case of a lapsed policy between the provision in line 4, page 52, and that in line 17, page 53.

On page 52, line 8, the blank for the rate of interest on loans I have suggested filling with the word "six," though I believe most of the companies are now loaning at 5 per cent.

The above covers the pointed objections, so far as I have discovered, and we should be very lucky if the committee is induced to adopt them.

Yours, truly,

J. S. ENGLISH, Vice-President.

Suggested amendments to bill H. R. 18804, introduced by Mr. Ames.

Page 14, line 25, change the word "January" to "February."

Page 26, line 16, change this line to read "first, fifth, and sixth clauses."

Page 31, add to line 14 "except that a stock life insurance company issuing participating policies shall be permitted to issue nonparticipating or stock policies, provided this class of business is kept entirely separate and distinct from the other."

Page 32, line 7, eliminate the words "of more than thirty thousand indabitants."

Page 33, eliminate section 9.

Page 42, line 13, before the word "policy," introduce the word "participating," and in line 14, after the word "that," eliminate all the words to the following period in the fifteenth line, and introduce in place thereof the following: "The accounting, apportionment, and distribution of the surplus shall not be delayed for a longer period than five years from the date at which the insurance went into effect, or from any preceding accounting, apportionment, or distribution of surplus." Eliminate the remainder of line 15, also lines 16, 17, and to the period in line 18, and introduce in place thereof the following words: "When any such accounting, apportionment, or distribution is to be made after setting aside," etc. From line 23, after the word "the," eliminate the word "remaining" and introduce, after the word "surplus," the following words: "divisible to policies entitled thereto by the dividend term adopted by such company, which surplus shall be equitably apportioned to all such policies issued on or after the 1st day of January, 1907." Eliminate the remaining words to the next period.

Page 43, line 6, eliminate all after the word "issue" to the period in line 8. From line 17, after the word "be," eliminate all the words to the following

period, in line 18, and introduce in place thereof the following words: "withdrawable in cash by the owner at any time thereafter."

Section 47 thus amended will read as follows:

"That every life insurance company doing business within the District of Columbia shall provide in every participating policy issued on or after the first day of January, nineteen hundred and ———, that the accounting, apportionment, and distribution of the surplus shall not be delayed for a longer period than five years from the date at which the insurance went into effect or from any preceding accounting, apportionment, or distribution of surplus. When any such accounting, apportionment, or distribution is to be made, after setting aside from such surplus the sums required for the payment of authorized dividends upon the capital stock, if any, and for a contingency reserve not in excess of the amount prescribed in this act, every such corporation shall separately determine the aggregate amount of the surplus divisible to policies entitled thereto by the dividend term adopted by such company, which surplus shall be equitably apportioned to all such policies issued on or after the first day of January, nineteen hundred and seven. The share so apportioned shall be payable to the holder in cash or, at his option, accumulate to the credit of the policy at such rate of interest as shall be allowed by the company and be payable upon the maturity of the policy, or withdrawable in cash by the holder on any subsequent anniversary of its issue. Such company may require the holder of the policy to elect how said dividends shall be applied, as above provided, by mailing a notice of the amount of them and the options available as aforesaid to the policy holder in a sealed envelope in the manner required by the provisions of this act upon notices of premium payments, and in case he shall fail to notify the company in writing of his election within three months after the date of the mailing of said notice the surplus shall be withdrawable in cash by the owner at any time thereafter.

"The dividends shall be payable, respectively, either upon the anniversary of the policy next after said thirty-first day of December or upon a day certain in the year following said date, according to the rules of the company and the terms of the policy, and upon the sole condition that the premium payments for the policy year current upon said thirty-first day of December shall have been completed. This section shall not apply to any stock life insurance corporation which on or after the first day of January, nineteen hundred and ——— shall transact and represent itself as transacting its business exclusively upon a nonmutual basis and which shall, after said date, issue only nonparticipating policies."

Page 47, line 9, after the word "benefit," change the word "and" to "or," and, after the word "children," introduce the words "as may be provided in such policy."

Page 47, line 15, after the word "application," eliminate the words "and examination;" also eliminate the following parenthesis.

Page 48, eliminate section 54.

Page 48, section 55, in all the forms of standard policies, under the head "Participation," shown in the ordinary life policy on page 51, line 11, follow this clause with the words "or in case of a nonparticipating stock policy;" insert in place of this clause the following words: "this policy shall not participate in the surplus of the company," and eliminate from the policy all that portion thereof relating to dividends.

Page 50, line 3, in place of "legal representatives" insert the words "executors, administrators, or assigns."

Page 52, line 4, eliminate the whole of this line and insert in place thereof the words "withdrawable in cash by the owner at any time thereafter," or, if the policy has lapsed, "shall be applied as hereinafter provided."

Page 52, line 8, insert in the blank the word "six."

CONNECTICUT GENERAL LIFE INSURANCE COMPANY,
Hartford, Conn., May 3, 1906.

HON. MORGAN G. BULKELEY,

United States Senate, Washington, D. C.

MY DEAR SENATOR: I received your favor of the 23d, together with Document No. 333, "A message from the President of the United States transmitting the report and recommendations, with accompanying papers, of the insurance convention which met in February last at Chicago;" also a copy of bill H. R. No. 17760, by Representative Ames, introduced in accordance with the message.

I have been so very busy during the last two weeks that I have not had time to give the bill the attention it deserves. However, I did read it through with some care on the train last week, and made a note of some points which I meant to speak to you about. I am unfortunate in not having the copy of the bill which I read through in my hands at this time, but I can remember a few of the points, and I have another copy of the bill here, so that I will venture to state briefly what I particularly remember having noticed on my reading of the bill.

In section 26, page 31, there are careful provisions for the investment of the capital of domestic life insurance companies. This does not interest you and me, except that it is supposed to be set up as a model insurance bill, which other States may wish to copy. It has always struck me that the laws of the State of Connecticut relative to the investment of funds of a life insurance company were about as excellent as could well be devised, and I believe that the wider latitude and the fewer specifications there are as to exactly what sort of investments a life insurance company may hold the more opportunity there is for the exercise of good judgment on the part of the officers and for a favorable return of interest to the insured.

I am aware that these sentiments do not conform to the present tendency in legislative matters, and I am also aware that savings banks have been held up as models for life insurance companies to copy in the matter of their investments. As you yourself know, the sort of a man who is at the head of the average country savings bank has got to be hedged around with a good many restrictions in order to invest the funds of his clients safely.

I do not feel competent to criticise the sections dealing with the election of trustees for mutual life insurance companies; but I would call your attention to the fact that under section 35 it is stated that each policy holder of any company shall be a member thereof and entitled to vote at all meetings and elections. It was brought out at the hearing in Albany that the term "policy holder" was not a sufficiently definite one, and that it should be defined as the person whose life is actually insured in the company unless under the provisions of the bill it is wished to have the holders of assigned policies vote in lieu of the insured.

As I look upon this bill the most radical part of it is that under section 54, in which the standard policies are outlined. As I understand the cry for standard policy, it proceeds from the wish to put every company on an exact level in order that the returns to the policy holders may be measured in each company, and that no company may have the advantage of having any different or better contract than any other company.

Again, I believe, this to be a very mistaken idea on which to legislate, and think that each company should be left free to devise the sort of a policy which they believe they can most safely and best issue. The idea upon which the standard policy in this bill is devised is apparently that any surrender charge is wrong. This is a more liberal idea than I have yet seen advanced by any company under the stress of the fiercest competition. We have sometimes had surrender values which were after the fifteenth year greater than the reserve, under the deferred dividend plan, but the idea of being able to issue a policy with annual dividends, and in two years pay the full reserve as a single premium for any sort of extended or paid-up insurance is one that is, as I look at it, impossible if the business of life insurance is going to be actively prosecuted. These policies do not provide for any particular loan or cash value—that is, the company may fix them according as they choose. And apparently it is thought proper to exact a surrender charge if the insured fails to carry out his contract and withdraws his cash; but it is not thought proper to exact a surrender charge if the insured fails to carry out his contract and yet wishes to apply the reserve to extended insurance. Yet the latter action on the insured's part may be of vastly more harm to the company than the former action could possibly be. As far as I know it has been the general custom of companies to exact a little greater surrender charge if extended insurance option was taken than if paid-up insurance was taken, and there is, as we all believe, a natural selection against the company in the matter of dropping the policy and going upon extended insurance. However, some actuary could very much better criticise this policy than I can myself with the limited time which I now have.

It seems to me that if a model bill is going to be enacted, that the proper method would be to appoint a committee of experts and not try to have any gentleman, however able he may be, who is as unacquainted with the subject of life insurance as I understand Mr. Ames frankly states himself to be, re-

sponsible for the drawing of the bill. For instance, if a standard form of an insurance policy is to be framed, it seems to me that a committee of actuaries of various companies should be called together and settle upon what they believe would be a satisfactory form of a standard policy. This can then be submitted to any committee which is framing a bill for the insurance interests, and the committee of actuaries can be examined on the subject of the provisions of this policy, and if they are not able to satisfy the committee that the policy is as it ought to be, it can then be changed. I feel absolutely certain, however, that the person who drew this present standard form of policy had never been connected with a life insurance company in any official capacity.

If this letter is somewhat rambling kindly put it down to the fact that I am leaving the office this afternoon for a period of a couple of months or so, during which time I expect to be married and go abroad.

Yours, truly,

R. W. HUNTINGTON, Jr., *President.*

THE PHOENIX INSURANCE COMPANY,
Hartford, Conn., May 8, 1906.

HON. M. G. BULKELEY,
United States Senate, Washington, D. C.

DEAR SIR: Many thanks for the copy of House resolution No. 417 (Esch) just received. If this resolution becomes a law it will be wise action by Congress. Then, by-and-by, when the San Francisco storm is over, experienced fire underwriters can appear before the committee and present phases of the subject that never occurred to or were purposely ignored by the men who prepared the model (?) plan recommended by the President. As you well appreciate, the subject is too large, broad, and deep for a body of inexperienced men (insurance commissioners) to handle. Insurance commissioners come and go, and their point of view is too narrow. A model law can be drawn, but men knowing something about the necessities of the business should certainly be consulted.

I am, sincerely yours,

D. W. C. SKILTON, *President.*

STATEMENT OF CHARLES W. SCOVEL, PRESIDENT OF THE NATIONAL ASSOCIATION OF LIFE UNDERWRITERS.

Mr. SCOVEL. Mr. Chairman and gentleman of the committee, I think it proper first to state in what way I, as president of the National Association of Life Underwriters, and Mr. F. E. McMullen, of Rochester, N. Y., the second vice-president, and Mr. E. J. Clark, of Baltimore, the secretary of the National Association of Life Underwriters, come to be present in Washington at this hearing. It is for the sole reason that this bill and its consideration form part of the work of the national insurance convention, called last February by a preliminary committee of which Superintendent Drake was chairman, with the express concurrence of President Roosevelt, and to which convention our association was, without any solicitation or prior knowledge whatever on our part, kindly invited to send delegates. We are, therefore, not volunteers, nor do we come representing the home offices of the companies, all or any. We are here, so to speak, as "friends of the court," if I may use the phrase. The National Association of Life Underwriters is the only national life insurance body. Our position among all insurance men is unique, in that, as a body, we have no relation whatever to the home-office managements, to all of them or to any. The association must be nonpartisan as to them, for the reason that, every one of us representing a different company, we can only have common ground

by leaving individual companies out. Our associations have, therefore, been recognized as standing in a peculiar sense for the common ground shared by all the reputable old-line companies for the cause of life insurance as a whole.

During my momentary absence from the room yesterday the learned actuary from New York, Mr. Dawson, took occasion to make some remarks which, after I returned, I heard himself refer to as a serious charge against our association, including with it, you may say, the members of the Chicago convention and those who have participated in the formation of the Ames bill. It all seemed to be based upon the circular letter to our members which I hold in my hand, and I desire first to thank Mr. Dawson for having said of it: "It is a document which I think you"—this committee—"can not very properly decline to take official notice of." We had sent copies of the letter to the committee members individually, and we are thankful to Mr. Dawson for making a little more sure that it would be read.

He speaks of it from two or three standpoints, but I should not go to any great length in answering the charges, except that the subject-matter with which they are interwoven forms really a part of the substantive discussion before this committee. It constitutes on the part of the gentleman an argument why the ideals and conclusions of the Armstrong committee should be followed or considered by Congress rather than those that came from Chicago. There, evidently, was the head and forefront of the offending of the letter.

It pointed out what various prominent persons had said, and what the conditions showed, as favoring Chicago rather than New York. It pointed out, in the first place, that the Armstrong committee's bills were prepared under abnormally excited and hasty conditions. On that I need say nothing more than what has been already heard in this presence. No more, indeed, than was said by the gentleman himself, who spoke of laboring night and day and Sundays, also, in intolerable toil. It is not under those conditions that calm, judicious legislation is ordinarily brought forth. Also what we heard from one of the actuaries who was called in by the Armstrong committee during its final consideration of those bills, and who said that they were told: "This is an emergency that must be met" and out of which there must be hardships upon the innocent companies. That was testified before you as being repeatedly said. Those are the conditions and it is idle to deny it. It is perfectly patent on the face of the thing.

The Armstrong committee has done a great service, as I am very glad to have this opportunity of saying, and as I have said before our associations in various parts of the country repeatedly; no longer ago than Saturday night, before the meeting of our association at Louisville, in the presence of the insurance commissioner and leading citizens, saying that every insurance man in the country should get down on his knees and thank God for that investigation. I feel that from the bottom of my heart. As an investigation it was a remarkable success. As investigators it is doubtful if any such body has ever done more remarkable work. But when they come to legislate, then, instead of being in the position of a judicial, legislative mind, they are in the condition of a judicial sentencing mind. It

is like a court that has just gone through a disgusting criminal case and is considering how to punish the offenders. That is not the frame of mind in which to get up a model code. And that frame of mind, I believe, has had great influence upon the results of their work.

The word "conspiracy" was repeatedly applied, and very strongly. Without taking time to quote the language at all, it being said that this was a conspiracy, of which the conspirators were the managers of the national association, to undo the work of the Armstrong committee, to "kick its bills out" next year. Let me say very plainly that of these charges there was no scintilla of evidence adduced with the exception of this letter; not a single substantive fact was added nor was any fact here stated controverted. The whole matter of which the gentleman spoke was a matter of deduction and inference, which any one member of the committee I believe to be quite as capable of making for himself as the gentleman who spoke. And if it were merely a matter of the accusations against us, I would be perfectly content to leave it at once by placing the letter in everyone's hands and asking him to judge for himself. But the matter does also take in a comparison of the respective points of view and ideals of legislation which is germane to this discussion, and for that reason I shall proceed a little.

That the Armstrong bills were not regarded as final by themselves is best shown by the comment of Chairman Hughes the next morning after they were introduced: "It is well to remember that the legislature sits at Albany every year to correct mistakes." That was after saying that he believed the bills were about as good as they could be made now, and so on. The first idea that I saw in print anywhere that you were to look to the next legislature of New York for revision was from the lips of the eminent counsel. Then, in an official message from the governor of Massachusetts to his legislature, of which I have quoted a small part, occurs this very remarkable paragraph from the governor of a neighboring State:

I am informed that no State except New York has attempted to act in advance of this report [referring to the report of the national insurance convention to come in September] and those persons best qualified to express an opinion upon the conditions of legislation in that State believe that the bills pending in the New York legislature may, if passed now, require revision next year.

In like manner this circular letter of ours quotes the strongly contrasting ideals and principles set forth in the recommendations of the Chicago committee on March 22. Although the Armstrong bills were pending, and their report and recommendations had been before the country for weeks, it was upon the Chicago principles that the Ames bill was founded. And that bill was recommended to the consideration of the Congress by the President of the United States with a very strong expression of his—

entire faith in the ripe judgment and single-minded purpose of the insurance convention which met at Chicago and of the committee of that convention which formulated the measure herein advocated.

Gentlemen, that is the conspiracy—our calling the attention of the country at large—that is, of our membership throughout the country, to the fact that those things had been said by those men, and that they indicated that the States generally were not so likely to follow New York as to follow Chicago. I was also able to say, with no

small measure of pride, that we had communicated—and I believe agreeably—to the Chicago committee and to the President not only that our association was glad to express its hearty concurrence with the main principles that had been advocated by them, but also that we believed that our membership throughout the country would prove to be no small factor in helping to bring the press and the public and the legislators to agree with them. This “conspiracy” to spread the knowledge of what I have just read I cheerfully admit, barring the name.

One other matter that the gentleman referred to particularly, and that impliedly formed a basis of accusation, was the thought that seemed to be in his mind that we favored the preliminary term plan over and above the select and ultimate plan with which his name has been so intimately connected.

Mr. ALEXANDER. Before you go on to that point, I wish you would give to the committee briefly, if you will, the objections which you have to the Armstrong legislation. I mean in a brief, general way.

Mr. SCOVEL. I was coming to that in a moment, Mr. Alexander.

Mr. ALEXANDER. I beg pardon, then. Just go ahead.

Mr. SCOVEL. The fundamental principles are the things I object to.

Now, as to these two methods of valuing policies. Our association has always endeavored to keep within the lines that we are most familiar with, and upon a purely actuarial question has never, so far as I know, expressed any opinion. Our letter carefully avoids disapproval of either method. While recording that the committee “prefers” one to the other, we refer to both alike as methods of “recognizing the public need for new and small companies.” We welcome the recognition of that need. As to these two methods, both are, in my own opinion, practicable and possible, and would, so far as we are concerned, be left entirely to the actuaries. But we do believe in urging, and believe that it is high time to urge that provision be made all through this country for the proper formation of good, honest, old-line life insurance companies.

Mr. STERLING. How is it possible to organize new companies successfully in competition with those now in existence?

Mr. SCOVEL. The effect of such competition—particularly in the district where the new company starts and has the advantage of being a local company with the prestige of its directors and so on—is not anything like as vital or conclusive as is apt to be thought. It is unquestionably an advantage to the older and larger companies to be able to point to these facts with a certain class of people. On the other hand—and this is a thing I wish I could make every member of this committee understand—this life insurance proposition is an individual thing, man to man. People sit up and read articles and have discussions about it in a broad general way; but in actual practice it is just as individual as taking a wife; it is just as individual as being converted to grace. In each case an individual man has got to be acted upon by points that attract him, under the persuasive influence of a person who himself is attractive to him. That is what writes insurance, and that is the only thing that ever did write insurance or ever will as long as human nature remains the same. And so it is that the agents of a small new company can start out in the neighborhood, taking one man at a time, and convince him that he

individually needs insurance and get him to act now instead of procrastinating. That is the vital thing in every case. Company figures and policy details are and ought to be secondary points as a rule. When these points are dwelt on and comparative figures urged by rival agents, the man commonly loses that vital impulse to act now. That vital impulse is created chiefly by the agent's personal force, whether he represents a small new company or a large old one. Direct competition and comparison are absent in most cases—fortunately for the applicant. I think there has been a great deal of mistaken talk in regard to the desirability of laying down, side by side, company figures or contracts or dividend estimates and such things. I do not think that they are desirable in the interest of the public or the policy holders, if we can in any other way secure honesty and economy ; and I think we ought to be able to do so.

Mr. STERLING. The old companies are pretty likely to get the agents, though, are they not?

Mr. SCOVEL. Unquestionably it is a difficult thing to establish a new company, but it is being done here and there, and could be done more generally under proper legislation for that purpose. I am glad to be able to say to you that in our own city of Pittsburg three years ago there started out the Pittsburg Life and Trust Company, founded with admirable men at the head, men that we all knew and respected ; and it fell to my lot officially to extend a welcome to them on behalf of our local association. I think it was probably the first time that an official welcome was extended to a new home company by its competitors. We were glad to have those men held up before the people of Pittsburg as a personification, so to speak, of the dignity of insurance and its success and all that. Every bit of good competition and honest competition in the field helps convert more people and to spread the cause of insurance. We have only begun to insure the world. It is not like business houses competing to get full share in supplying a regular existing demand. The demand has to be created, or at least awakened, in each individual case. Although the word has been ridiculed in this connection, it is a "missionary" movement as yet, with a very much larger number of unconverted than converted. It would be very foolish for the different churches to get to wrangling over the few native converts when there are whole fields full of those that have not been converted at all, or even preached to at all. That is, roughly, my idea about the relation of the companies in that connection ; and we believe that new and sound companies should be organized, and that legislatures should recognize that public need.

The special thing that I wanted to speak about, and that brings me more closely to what Mr. Alexander was asking, is this: Mr. Dawson said that in the beginning of the work upon the bills after the investigation he was absolutely opposed to the various limitations and restrictions proposed or talked about, and that he remained opposed to all except one of them, namely, the restriction of expenses for procuring new business, as you remember. I believe he said also that he became a somewhat lukewarm convert to the standard policy idea. He was converted to the necessity of limiting by law the expense of new business, and he was led to believe that it was not sufficient to rely on publicity and allow the usual conditions that govern competition to bring about the right result, but that it should be fixed by

ironclad law, because, as he said, there was the greatest carnival of rebating going on, which he blamed wholly on the agents and their associations. He used the name of the association as arch rebaters, and spoke of the association as individuals who did not want the right thing done, and so on. He said, lumping us all up, that it was evident that these people did not want to be good, and that they would have to be compelled to be good. Even though he did not believe that that limitation was a desirable provision in a permanent model code, yet he had come to believe it to be necessary in the present emergency.

Now, as to that. I am glad to have that question raised; very glad. The majority of the rebating and evil practices, the worst part of them, have commonly been done by brokers and by men going hither and thither and yon—not the permanent men and those attached to general agencies who constitute the real permanent force. The majority of those have not been members of our association.

Let me admit with perfect frankness that there have been quite a number of members of our association, a very large number, in the different cities who have been pretty poor Christians, as there are in most churches or other bodies of the kind; but just in so far as they were guilty of those practices, just in so far did they fall short of being good association men—fall short of the standards which we have endeavored to uphold, and have not only talked about but endeavored to inculcate and bring about in actual practice.

For twenty-three years the associations have been fighting hard against those evils. In twenty-four or twenty-five States—over twenty—there are antirebate laws. In almost every case the law was enacted at the instance, and commonly at the expense, of the local association. It was so, I know personally, in Pennsylvania, with the two associations united—Pittsburg and Philadelphia—in obtaining the original law; and the Pittsburg association, at its own expense, some years later obtained the additional amendment making it a penal offense to accept a rebate, as well as to give it. That has been done, as I say, in many States for many years. Within the last six or eight months, when it commenced to be seen that the conditions were changing in the “high-pressure” companies, chiefly responsible for rebating, there has been a very distinct revival of our direct activity to stamp out those evils outside of the slow process of education, which we have mostly relied upon, though we have actually prosecuted a number of cases under those laws, at our own expense, in past years. Recently, I say, many associations have done just as the Pittsburg association did in December—made an antirebate agreement among themselves, individually, and provided for its rigid enforcement. Pittsburg raised a subscription of \$3,000, which was ample to start with, and publicly announced that we had retained a criminal lawyer—such as Mr. Jerome is in New York, for instance—to prosecute any offenders. And rebating has practically stopped in Pittsburg. New York is doing the same thing, and all over the country it is being done, and it is succeeding. Why? And why did it not succeed before?

You can understand that better when I tell you that in 1895 the national association, through its then president, Mr. Plummer, visited and proposed to nearly all the companies of the country, by a visit to each separate home office, an antirebate compact among the companies. Such compact was formed by twenty-five companies in

the fall of 1895, with ex-Speaker Thomas B. Reed as the referee, by whom cases should be decided. That was not mere talk on our part. The underwriters meant business. The companies did not. That is, some of them did not. That is the frank reason why it did not succeed. It was acceded to, but not in good faith. I stand here and say that, meaning to be responsible for the utterance—on information and belief; I was not personally present, but that is beyond question the fact, and it is confirmed by much else known to me. Various companies that would say: "No, you must not rebate," would yet make such arrangements as practically amounted to a compulsion upon their agents to rebate. In other words, they would require their agents to write such an amount of business in order to keep their jobs, or to get a certain big bonus, that no man could sell it for 100 cents on the dollar within the time.

Mr. ALEXANDER. The Armstrong law covers that, does it?

Mr. SCOVEL. The Armstrong law makes a limitation of first year's expenses which Mr. Dawson thought was necessary, because he said that something of that kind was needed to stop these evils. I am telling you that they are stopping and have been stopping, and that we, whom he said were the arch leaders in those evils, have been for twenty-three years the arch leaders against them. That is what I want to get clear.

Mr. ALEXANDER. Do you not welcome the Armstrong law that will stop it?

Mr. SCOVEL. No; because it ought not to be stopped by amputation at the neck. It can be stopped without entailing all the evils that are threatened—not only threatened but absolutely confronting us, through the undue limitation on a false principle that the Armstrong bill makes. That is my opinion. Of that I want to speak just a moment later, because I wish to say also, right in connection with what the national association did there, that in 1899 we followed up that action with the resolution which I shall quote—remembering, now, that it was charged that we were the ones who stood for the high first-year commissions which have been thus misused for rebating. That is the very common idea in people's minds about the agent, that he is out to get the highest commissions that he can from the company. This is the resolution adopted in 1899 at the Buffalo convention of the national association, by the most representative body of insurance agents in the world, I suppose, or in the country at any rate. It was passed after considerable discussion with one adverse vote, and unanimously reaffirmed in 1900:

Resolved. That we, the members of the National Association of Life Underwriters, respectfully urge the companies to consider the advisability of reducing the first year's commissions paid on new business, and increasing the renewal commissions paid, in order that the greatest possible encouragement shall be given to the writing of bona fide business only—

through the lower first year commission—"and its maintenance upon the books of the company"—through the longer and better renewal commission, which is the best way in which to bring about such maintenance.

That is the position the underwriters have stood on, and that thing is all that is needed, and it is being done under the great force of publicity and the demand and desire of the leading men in the field. Having said what I did about the companies before, I am glad to

be able to say now that I believe at this time there is no company but what is in perfect good faith in its desire to stop rebating, and that this evil is in its last gasp. That is my profound conviction, and I believe that that has been brought about—and that is why I go down on my knees in thankfulness for this investigation—by the tremendous upheaval that has taken place. It has had several effects—one in making the companies feel some sense of common cause instead of bitter rivalry; another to dislodge those managements which had not been in good faith—a very important one; and another to make possible an alignment of the companies which had been feebly trying, with jealousies and difficulties in the way, to get together upon these questions. They are getting together, and I believe, gentlemen, that you ought to trust, and that the legislatures of the country ought to trust, something to the general disposition to be honest and straightforward in the management of these great trusts, and to do the right and fair thing, having evidence also that an association as widespread, and becoming more and more influential, such as ours, is committed irrevocably to those policies. That being the only reason why the gentleman who argued before you was in favor of restricting the first year's expenses, we think that there is very good reason for seeing how this actual reform from within is going to work out before adopting a most drastic and severe limitation that will disorganize the agency forces of all the companies doing business in New York, as you have already heard, and into which I do not feel that it is necessary for me to go. That is one principal thing that we object to.

MR. ALEXANDER. You do not object to it because it is going to stop the rebate business?

MR. SCOVEL. Oh, no.

MR. ALEXANDER. You object to it because it will cut down your ability to do business?

MR. SCOVEL. That is not necessary in order to stop the rebate business, to compel by law all the expenses of all the first year's procurement to be taken out of an arbitrary, inflexible fund, limited in advance to so much in proportion to the estimated business of the year, and this under very peculiar conditions, including limiting the renewals, which is a very false move, in the opinion of the most conservative companies. It is the most conservative companies, those that have been administered with the utmost fidelity, that are most unanimous and emphatic in their belief that longer renewals to agents are good things for the maintenance of the business, and to make the agent in every sense interested in the permanency of the company and the satisfaction of the policy holders.

MR. Chairman and gentlemen, I think it will probably save time in presenting the principles that have been spoken of for me to read a few paragraphs that put them in somewhat condensed shape from a little talk that I gave in Boston first, just before the Armstrong report even was filed, and before anything was known, so that it has no reference at all to the particular thing, but to the general principles which I believe every thoughtful man in constructive statesmanship ought to have in his mind at this period.

It has been endeavored in the opening paragraphs to show that life insurance is an organism, and the policy holder a living cell in it—not merely a contractual relationship, as was mentioned this morn-

ing, and from which I absolutely dissent. The policy holder is an integral part, and many of the misconceptions have grown out of this matter in considering it as a dealing between opposite parties, instead of being a cooperation among parties with reciprocal rights, and with duties as well as rights. I think much of the false thinking of to-day is due to that fundamentally wrong basis.

I am speaking, then, of the various forms of cooperation that we roughly class together as "business." I believe that—

Life insurance stands preeminent among them, no less for the scientific solidity of its structure than for the far-reaching values, material and spiritual, which it yields to the family and the community. Although its existence has been brief as compared with the hoary age of church or state, life insurance has already established its right to rank with them as one of the three main institutions that promote the welfare and progress of mankind.

I would like to have an hour to defend that thesis.

Being yet in its early years, with broad fields of usefulness yet to explore and develop—fields, some of which have long been worked under compulsory laws by foreign, paternal governments—life insurance in America is urged on by an overwhelming responsibility to the future of the race—to proselyte, expand, unfold, to preach its gospel to every creature.

My interest in life insurance dates from the time when, as a law student in Berlin, twenty odd years ago, I daily read the debates in the Reichstag on the founding of the German industrial insurance system.

Mr. STERLING. That is a government insurance company?

Mr. SCOVEL. Not a company.

Mr. STERLING. But government insurance?

Mr. SCOVEL. It is compulsory government insurance, which I hope and expect never to see in America. It has got to be worked out by individual initiative in this country and can not be worked out if we are cribbed, cabined, and confined as to our present fields, without attempting to begin to go into the wider fields. So I say insurance is in its earlier years, in its infancy, and with broad fields of usefulness yet to develop, for which our great population is wholly dependent upon life-insurance men and can not look to a paternal government. Under those conditions, I say:

Life insurance in America is urged on by an overwhelming responsibility to the future of the race to proselyte, expand, unfold, to preach its gospel to every creature. This great duty and its vast importance to humanity need to be emphasized, because there is just now a general and very false conception that the primal duty of life insurance is to pay dividends to the policy holders already in. In many quarters it seems to be considered wrong in principle to use, or even borrow, the money of present policy holders to bring in others.

Gentlemen, this misconception is nearly two thousand years behind the times. It belongs to Paganism, not to the Christian era. To place the return of profits to present policy holders above the duty to propagate and proselyte, to make the ratio of dividends the prime test of company excellence, is just as though one were to make the prime test of worthy manhood the amount of money one had laid by in a savings bank, thereby rating the miserly bachelor above the father struggling to maintain his family.

No, sirs; fatherhood, motherhood are the supreme tests of manhood and womanhood; and the supreme test of a life-insurance management is, how successfully does it press forward its mission of insuring lives? It is distinctly a secondary matter how economically it does its work, and how much it has left over to return in dividends. The first function of the common fund is to extend the organic life. Only after that first function is working to its normal limit can there be said to be anything left over to be returned as margins or dividends.

Do not misunderstand me. I do not belittle economy. Quite the contrary. The more fully we comprehend the true mission of life insurance the more must we decry any waste of its resources, the more are we indignant over any abuses committed in its workings. The unworthy father who indulges himself while neglecting his children; the disciple who betrays his Master for 30 pieces of silver, are types that we detest more strongly the more fully we realize the sacred duties thus violated.

We admit frankly that there have been evils and abuses and a general tendency toward wastefulness. They should be and are being corrected. But it is always so in the working out of the great natural instinct of propagation. Nature herself is amazingly prodigal, seemingly wasteful, in all her own means for insuring the perpetuation of the species; and wherever a man's free will has entered into the problem he has been free to use her beneficent provisions in his own way, often with evil results.

We realize fully that just as man's instinct to propagate has always been the source of great evils and abuses, so also the selfish lust for power and size has, in recent years, led some life-insurance managements to stimulate strongly the production of "business" that was not growth, but disease—not flesh, but dropsy; "business" that had to be almost given away and that swelled the apparent total of first-year expenses by large amounts of fictitious commissions; "business" that, after the first year, left nothing on the books but a long train of evils—

and one of the worst of them is that all kinds of figures and ratios and percentages that are being considered by legislatures at this day have been muddled up by this mass of stuff that ought not to have been there at all.

The ACTING CHAIRMAN. When you say "fictitious commissions" what do you mean?

Mr. SCOVEL. I mean the rebates, the money the policy holder did not pay and the agent did not get, but which appears on the books as commissions retained by the agent—a mere fiction. Sometimes the agent would be given a salary to live on and get business for 10 per cent of the premium, which amount he turns over to the company, and the company pays him his salary to go around and do it. That is an extreme instance, of course.

The ACTING CHAIRMAN. Ten per cent to the company, and the company had to insure those lives?

Mr. SCOVEL. The mortality the first year is very slight.

The ACTING CHAIRMAN. But more than 10 per cent?

Mr. SCOVEL. Not of the whole premium, I believe; not much more. I do not want to be betrayed into attempting actuarial calculations.

The ACTING CHAIRMAN. The evidence has been given, or the statement has been made that 30 per cent of the first premium was loaded and that the other 70 per cent was supposed to represent risks, etc., and that 50 per cent of that was saved in the first year. So that that would leave about 35 per cent of the premium that was necessary to carry that first year's business, or something like that. You say that only 10 per cent was collected?

Mr. SCOVEL. Sometimes; yes, sir. As I say, that was an extreme instance, and not by any means prevalent; but rebates of 50 to 60 per cent were not uncommon. I am speaking here in the main of the larger policies. But it is those large policies that make the big showing in the totals. There would be only a few people, perhaps, who would get any rebates, but they would be for policies of \$50,000, \$100,000, or \$150,000 or something like that. The evil might not be very widespread among the community, and yet when you come to figure the totals of the amounts shown and the totals of the amounts lapsed, and all those things upon which these various deductions are

being made, these large fictions have introduced a very great variation from the facts.

The ACTING CHAIRMAN. Let us get down to the particular question that Mr. Alexander put: Why do we not need the restriction in the Armstrong bill to prevent abuses like those?

Mr. SCOVEL. The Underwriters' Association has and is standing for the remedying of those conditions, and is at present doing it.

The ACTING CHAIRMAN. True. But will not the Armstrong bill help remedying them? Will not the provision that limits the expenses of the first year help prevent that kind of thing from occurring again?

Mr. SCOVEL. Yes, sir; as you would prevent trouble with a toe by amputation at the knee; but it may not be necessary, unless gangrene had set in.

The ACTING CHAIRMAN. How much do you think would amount to amputation—a limit of, say, 30 per cent?

Mr. SCOVEL. I do not think the company could operate on 30 per cent.

The ACTING CHAIRMAN. Could you limit the whole expenses to 50?

Mr. SCOVEL. I do not think they could on that.

Mr. ALEXANDER. What does the Armstrong law hold?

Mr. SCOVEL. I do not pretend to be up on the actuarial figures.

The ACTING CHAIRMAN. You think that holding it to 60 per cent of the first year would be amputation, destroying the value of the business?

Mr. SCOVEL. I believe it would very largely; yes; to make 60 per cent cover the total expenses that are supposed to be attributable to first-year business. I am not prepared at all to announce an actuarial conclusion on these matters, but I think this is the principle: That you ought not to say any arbitrary period of months is the test of when a new member has balanced his account of value with the organism itself any more than you can say exactly at what year a child has begun to be worth having been born and begun to take his place as a productive and valuable factor in the human family in the next generation. It is just like the growth and continuation of the race, this continual going on of the organism of life insurance.

The ACTING CHAIRMAN. I am trying to get at what is a fair part of the premiums to be spent in expenses.

Mr. SCOVEL. Such an amount, sir, as will be reimbursed in a reasonable time. That is as far as I could say. Probably not in the first year.

The ACTING CHAIRMAN. What do the agents usually get for subsequent business—what commission?

Mr. SCOVEL. Seven and a half per cent is the prevailing renewal.

The ACTING CHAIRMAN. I am just giving this as an example: Suppose 30 per cent throughout was given to the agent; would not he be just as likely to get new business?

Mr. SCOVEL. For the general agent; yes, sir. But that would require a readjustment of the financing, because the solicitor has to be maintained at the beginning, during the year that he is producing the business, and until he has gone on for some years he would not have a living income out of renewals, of course.

The ACTING CHAIRMAN. There are many people doing business as real-estate brokers and as agents who do mostly renting, and who are

satisfied with 5 per cent or 10 per cent commission on rents, and small rents at that, with constant work of solicitation, just like that of life-insurance agents. As I understand it, the object of the Armstrong bill was to lower the amount which is applicable to commissions in the beginning—expenses in the beginning—leaving it quite large afterwards, if necessary.

Mr. SCOVEL. No, sir.

The ACTING CHAIRMAN. Leaving renewal business to take care of itself.

Mr. SCOVEL. Afterwards they have limited it to 7½, which is perhaps the lowest ordinary practice, and limiting it to only nine years.

The ACTING CHAIRMAN. I am not speaking of that bill as being a model, but only about the bill which would do what you seem to protest against, which would make each premium pay for itself.

Mr. SCOVEL. I do not think that that is a necessary principle at all.

The ACTING CHAIRMAN. Would it not be a valuable one if enough commission were given to make it pay?

Mr. SCOVEL. I would not say so as to that principle. There are whole varieties of principles involved. As to the provision for commissions, I do not want to be understood as pretending to get right down to the exact figures upon which those things can be worked out. They would be very different under different policies and other conditions.

The ACTING CHAIRMAN. I am not favoring always strict legislation for doing things that can better be done by arrangement within the companies; but I am asking whether you do not think that some arrangement could be adopted, whether by law or among the companies, which would make all the premiums pay for themselves from the beginning instead of charging the expense of new business upon the old policy holders? In spite of all we have heard of the perpetuation of the human race, and each policy holder being a cell in the organism, each one is not so much interested in the growth of life insurance as he is in his own policy.

Mr. SCOVEL. But he is only paying his debt. In order to bring him in, the money of those preceding him had to be used for a time and then reimbursed as his policy pays back its share. That is the way it has been going on and goes on all the time. Until within a few months the heresy was never heard that it was a matter of principle that the first year of a new policy holder's money should cover his total expense and also the general expense of procurement of business or making propaganda in the community of this important public interest. I do not think it is to the public interest that the principle should be allowed to go unprotected against.

Mr. ALEXANDER. As I understand, then, you would not have any limitation to expense?

Mr. SCOVEL. By law, no, sir.

Mr. ALEXANDER. What is your next objection to the Armstrong legislation?

Mr. SCOVEL. Some of it will come in a moment, in the line of my statement.

Mr. DE ARMOND. I want to ask you one question on that. Is not this policy of putting no limitation upon the first year's expenses in the interest of the large existing companies, rather than the smaller or new companies?

Mr. SCOVEL. I think not, sir. I think that, as a matter of fact, the limitations under which an old company may simply quietly sit down, dismiss most of its agents and take in the premiums as they come, and do but little new business, and be perfectly in clover, will throttle the small company—that is, if you are considering the interests of the company as a management, if you are thinking of the managers of the company and its being a mere business concern. If you are thinking of the interests of the new policy holders—the future policy holders, of the people who ought to have life insurance—the point of view is entirely different.

Mr. DE ARMOND. Do you know of any large, old, powerful company that is trying to get its clover in that way?

Mr. SCOVEL. I do not; but I should not be surprised at all, when men are coming to be officers of companies whose training is that of financiers and business men rather than that of insurance men, that they might welcome an excuse from the law to do that, to say: "It is not deemed desirable that the company should do much in the way of insuring. If we take care of the policy holders we have at economical rates, we are following out the policy indicated by these legislative bodies." And they would have quite a justification in saying so. And it would be a great calamity to the country, except in so far as you provide fully in other ways, that for many years have been artificially closed for the formation and operation of new companies. That I heartily believe in, and I believe in the working of all good companies, new and old, together.

Mr. STERLING. I think the New York law, if I understand it correctly, puts a limitation on the amount of business the New York companies can do each year. Will that result in benefit to newly organized companies?

Mr. SCOVEL. Possibly.

Mr. STERLING. Or infant companies?

Mr. SCOVEL. I should not be surprised if it would in some respects; but it will do so, in my opinion, to the detriment of the public, because I think there is plenty of room for the big companies that you speak of to write all the business it is possible for them to write, and yet have plenty of room for all the new companies that are likely to be organized, and still the field of life insurance would not by any means be filled. For thirty years or so there has not been a company organized that amounted to anything particularly. That is a most extraordinary thing. What would you think if all the great growth of this country's banking interests, for instance, were today in the hands of banks that had been established for thirty years, and that all over the country there had been no new banks for thirty years? It is most extraordinary that the brains and capital of this enterprising American people have been artificially kept from entering the life insurance business. I want to say, however, that I think during this experimental period (as it has been largely since the panic of 1873 until now) that it was fortunate that the development was in good, strong hands. That had its advantages during the formative period. But the time has now come to open the doors to new companies upon a safe, sound basis.

The ACTING CHAIRMAN. Is not one of the reasons that new companies did not come in that the old companies had a reserve of old

premiums, paying the money to get new business, while the new company had to pay the expenses out of new premiums?

Mr. SCOVEL. Yes; to a large extent, but—

The ACTING CHAIRMAN. Then, if you force the old companies to collect evenly from all their policies, and not pay so much money on new policies, the new companies would have had a fair chance?

Mr. SCOVEL. I am afraid I am in danger of being misunderstood. When I have said that I do not believe in limiting expenses directly and rigidly by law, confining them to an exact part of the first premium, do not misunderstand me as saying that there should be no lessening of the extravagance of the recent past.

The ACTING CHAIRMAN. You spoke as if it was missionary work, and to be carried on like the work of the Christian Church in making converts instead of being done for the benefit of each particular heathen.

Mr. SCOVEL. I did not want to have my imagery put too strongly, Mr. Chairman.

The ACTING CHAIRMAN. No. Imagery is a dangerous thing sometimes. I think you had better get down to what you think would be the right thing, and what the effect of each part of this bill would be.

Mr. SCOVEL. Very well. I am trying to answer the questions as I can, with regard to these points.

All I want to say is, so far as the general principles are concerned, that we do not think it is necessary or right to announce as a principle, and to found legislation upon that principle, that a new policy holder must, in his first year, pay for himself, and also pay for the total cost of propaganda for the year, but that the question should be what is the reasonable value of that policy to the company as a whole, and the reasonable time within which it will make up its procurement cost. It might be in six months, it might be in thirteen months, or it might be in eighteen months, or more. It would depend on the different kinds of policies, and it would certainly be very different in different kinds and classes of companies. The inflexibility of the limit and the falsity, as I see it, of the principle, are the things that I object to in getting at the problem in that way.

Mr. DE ARMOND. How would you get at it?

Mr. SCOVEL. Chiefly by publicity; by the publicity that is recommended here in this bill, and to which I would add something more, which I may just as well come to at once.

Mr. DE ARMOND. How would you do it by publicity? If it is a good policy, as you seem to advocate, to use a very large part of the first year's premium in this propagation business, how would the publication of it correct it? And if it is a bad policy, why rest its correction upon the matter of publicity and the hope that the people would profit by that publicity?

Mr. SCOVEL. Because I do not look at the business, and I do not think that the public at large in its sane mind or that this committee in its calm thought will look at the business and its management, as a whole, as things to be legislated about in an atmosphere of suspicion; and that is the atmosphere in which the legislating has been done. I know it has been our own fault—that is, it has been the fault of those who, within the companies, have justified that suspicion. But that fault has been but a small part of the great record of life insurance and a temporary thing. It has been cured largely,

and I trust finally. So I believe it is the part of wisdom, in the interest of a business of such magnitude and public importance as this, to make haste slowly, and to amputate the finger first before going up to the next joint unless you have very good reason to believe that gangrene has gone into the arm; and I do not believe it has. There are many things in the situation to-day that are wholly novel which bear upon these questions of limitation and restriction.

Mr. DE ARMOND. Do you think that expenses have been too large in getting business?

Mr. SCOVEL. I do.

Mr. DE ARMOND. Yet you think there should not be anything in a model bill that would force a reduction of them?

Mr. SCOVEL. No; I do not think the business needs to be placed under guardianship.

Mr. DE ARMOND. Is not your admission that there has been too much expended equivalent to a statement that it should have been under guardianship when that was expended?

Mr. SCOVEL. No, sir; I do not think so. I would say exactly the same in regard to our great Pittsburg mills. A Frenchman comes over here and he holds up his hands in horror at the wastefulness with which coal and other materials are used, because it is not worth while to take the trouble to save it as compared with the cost. We have been through a period of tremendous pioneer growth in insurance, a time in which other problems were the main ones. But now I think the time has come to study economies more than ever before; and I hail the day.

Mr. DE ARMOND. But not to put any of that into model legislation?

Mr. SCOVEL. No; I do not think it is necessary. I would certainly think it was necessary if, after the next year, or two years at the outside, you found that the effect of this great cataclysm had not remedied matters. If then you found evil conditions persisting, I would say, "God speed you." And I would come here and ask for such legislation. That is our attitude, in so many words—that it is not right or wise to begin by enacting the most drastic measures when you know that they will do harm, and that these extreme measures should be resorted to only when it is found that the evil they are intended to correct can not be remedied otherwise. I believe that is the general idea of Anglo-Saxon legislation.

Mr. STERLING. If you have no objection, I would like to have you go back to the subject I spoke to you about: Do you remember what the limitation fixed by the New York law is on the amount of business that the company shall do in a year?

Mr. SCOVEL. Yes; I am glad that you mentioned that, for I have been amazed in the talk upon that subject that they seem to confuse the symptom with the evil. The top limit is \$150,000,000.

Mr. STERLING. Will that have a tendency to reduce, or at least will it have a tendency to stop, the immense accumulation of vast amounts of money in the hands of these companies?

Mr. SCOVEL. That is just the question.

Mr. STERLING. Just another question, which you can cover at the same time: Would the New York companies continue to grow under this limitation, or is that fixed as about the amount of new business that they can do and maintain the total business at its present status?

That is, does about that much business go off of their books each year?

Mr. SCOVEL. More than that has gone off at times, but the new conditions are likely to make a great difference in all these problems. It will be a very difficult thing to judge from the past as to the exact details and to apply the figures of the past to just such a matter as the lapse rate you ask about. With the difference in agency handling and in handling of the whole organism there come new problems of all kinds. It is a very complex, interlocking affair. But the real point in question is not the company's growth in insurance, but the menace of such enormous funds piling up in its hands. Take the largest of the companies, that wrote last year \$300,000,000, and you ask: Will a limitation of its business to \$150,000,000 stop the increasing accumulation of these vast funds? No, sir. If the limitation was that it should not write another dollar of new business its funds, which now are over \$400,000,000, will go on increasing for nearly ten years, I am told by the actuaries, to about \$1,000,000,000, through the accretion of interest on the reserve and payment of the premiums on existing policies. For that time, on the business already on the books, the curve will go up to about \$1,000,000,000 before the increasing age of that whole body of policy holders will begin to draw upon that fund, their premiums then being insufficient and the fund having to make up the deficit to carry them on. So that the very evil that it sought to be cured is not touched. They are vainly striving to cure the evil of piling up money by stopping the good work of insuring lives.

Mr. STERLING. It is appalling to me—the proposition laid down by Senator Bulkeley this morning—that the insurance companies of this country would control the money market and the business of the country inside of twenty-five years.

Mr. SCOVEL. I think so, too.

Mr. NEVIN. And it looks as if it were true.

Mr. STERLING. Yes; and it is an appalling proposition. Is it not better that the Government should do something now, whether you call it paternalism, or whatever it is, to stop this immense tendency toward accumulation?

Mr. SCOVEL. Yes; I agree with you; and I have on my memorandum here a suggestion that I have not heard mentioned at all in recent discussions, and which I would like this committee to consider in the effort to avert the future danger of the accumulation of great funds; not of great masses of life insurance, which is nothing but good to the community, but the great danger of overwhelmingly enormous funds and the possibility of their misapplication. I think that is one of the serious questions.

Mr. ALEXANDER. Can you tell us how to stop it?

Mr. SCOVEL. No, sir. I can tell you one suggestion that has been made that I am surprised has not been followed up at all, namely, it has been suggested in one of the insurance journals six or eight months ago that the difficulty might be met by what it called a plan of "trusteed units." Say that a given sum, as \$50,000,000, should be considered a unit; that when any company's funds were a little more than that, then \$50,000,000 should be segregated into the hands of a distinct small board of trustees, appointed with the utmost safe-

guards that can be devised (through aid of court, legislature, public authority, anything and everything), for the purpose of having that trust absolutely independent of control by the central insurance management, but charged simply and only with the duty of investing that money—a naked, dry trust, with no active duties but investing and accounting.

Mr. ALEXANDER. Making it a mere savings bank?

Mr. SCOVEL. Making each unit a sectional savings bank.

Mr. ALEXANDER. Under separate boards of trustees?

Mr. SCOVEL. Yes, sir; safeguarded, and the funds to go back through the main coffer only as required for immediate distribution under the policies. In some such way you could strictly limit the funds under control of the insurance management, and yet let it go on writing all the more insurance; and the more they wrote, the better. It is a great crime when a company has accumulated a great reputation, a magnificent agency force, and all the equipment to give hundreds of thousands of families the advantages of insurance, to shut it off. That should not be done without grave need; and it does not touch the problem, because, though you shut the new insurance off entirely, the fund will grow to \$1,000,000,000 in that one company. Indeed, the problem is here already, with three companies having \$400,000,000 or so apiece, and the control of two of them hanging in the air. This is one of the things that I wanted to bring up as a suggestion on the part of the Underwriters' Association, for the real problem is not being reached by limiting the new insurance.

Mr. DE ARMOND. Do you say that to allow a company to do \$300,000,000 of business a year and continue on for ten years would not put in the possession of that company at the end of the ten years a good deal more money than that company ought to have?

Mr. SCOVEL. Certainly it would.

Mr. DE ARMOND. Then does it not to that extent partially correct that tendency toward the accumulation of vast funds?

Mr. SCOVEL. It does.

Mr. DE ARMOND. Is it not good—that part of it?

Mr. SCOVEL. I think not, because it does not go directly to the evil, and in the roundabout way that it seeks to get at the evil it administers a serious slap to the good. I would try to seek some better, direct method.

Mr. DE ARMOND. But you have not found another way to suggest?

Mr. SCOVEL. I have suggested one idea that is worthy of consideration.

Mr. DE ARMOND. I know; but we are talking about a model bill.

Mr. SCOVEL. That would be a provision for a model bill.

Mr. DE ARMOND. Have you considered the idea sufficiently to recommend it for a model bill?

Mr. SCOVEL. Yes, sir; just exactly the form of its application I have not thought out, or the machinery.

Mr. DE ARMOND. Would not this be the effect: As these giant companies do less business, would not the smaller and relatively safer and more desirable companies do more, and would not they increase in numbers?

Mr. SCOVEL. I am not prepared to say with regard to that, but—

Mr. DE ARMOND. Would not that be the probable result?

Mr. SCOVEL. I think not, because the assumption upon which you would naturally imagine that result to be probable is that there is a relatively given amount of business to be divided among all. There is not. It is a great, virgin forest, and we have only begun to clear a little bit out of the edge.

Mr. DE ARMOND. But the larger the forest the more trees could be cut, probably, by the new axes?

Mr. SCOVEL. I do not know. Perhaps the imagery gets away from me.

Mr. DE ARMOND. Yes; we are apt to get a good ways off in indulging in this imagery. But you talk about its being a large and comparatively a virgin forest, into which the insurance people go. Is there not more progress made by a comparatively large number of comparatively small companies than by a comparatively small number of comparatively large companies?

Mr. SCOVEL. I do not know, Mr. De Armond. That would seem quite a theoretical question in the face of the condition that I have endeavored to describe, which is this: That there is business in abundance for all. That being so, the interest of neither would require any halting of the other. That is my honest opinion, and I am speaking, of course, for all in my capacity here.

Mr. DE ARMOND. Are not these large companies, some of them, so enormous and have they not so much control in the way that Senator Bulkeley suggested, that it is more difficult for the new companies to start up and for the small companies to get along than it would be if the wings of these large companies were clipped to a certain extent?

Mr. SCOVEL. I can not say that I think so; I do not think that would be the way to go about it, even if there was some little element of the kind.

Mr. DE ARMOND. Suppose something were to happen that would eliminate a dozen or twenty of the great life insurance companies of the country, would not the condition of things then be very much better for the starting up of new companies?

Mr. SCOVEL. But how much worse for the public.

Mr. DE ARMOND. I am not talking about its being worse for the public.

Mr. SCOVEL. I am.

Mr. DE ARMOND. Do you mean that the large companies do better by the public than the small companies?

Mr. SCOVEL. They insure people on good, safe insurance; and that is the biggest thing, whether they do it for 1 cent more or \$10 more, or less.

Mr. DE ARMOND. Is not that altogether a relative matter?

Mr. SCOVEL. Yes, sir; but that is the most important, and the others are relatively less.

Mr. DE ARMOND. Suppose a company of \$200,000 capital has \$100,000 insurance; is there any reason why the persons insured in that company are not just as safe as those in a big company having two millions capital and a million insurance?

Mr. SCOVEL. Absolutely. I represent myself one of the small companies. I have been a warm advocate of the formation of new companies and of the safety of the small companies. I spoke a moment ago of the fact that the Chicago committee recognizes the public

need of new and small companies. But I do not think, sir, in order to encourage that which I am heartily in favor of that it is necessary to "clip the wings," as you express it, of the already existing companies which are doing a great public service.

Now, if you please, Mr. Chairman, the underwriters' association desires to say that we urge the passage of such a bill as is here proposed, when properly amended as indicated. We believe, in the first place, that for the District of Columbia it is a wise thing, and the duty of Congress, to provide generally for incorporating and regulating new companies; that there may be new small companies on a proper, honest basis springing up in the District. We believe that the main provisions of this bill are likely to be sufficient to cure the evils (and they could be added to later, if they did not prove sufficient) and that, while curing the evils, they would make the least obstruction and the least disorganization of the effective affirmative force that already is doing this good work in the world; and we would approve especially the provisions for publicity. In this connection I would like to say that, on page 10, where an amendment strikes out section 12, that section should unquestionably, in my opinion, be reinstated, if there is going to be any considerable change introduced in the conditions after January 1, 1907. That provision, you notice, requires a statement separately showing results on the business in force up to December 31, 1906, and then on the business as it is to be done under the new bill. In the Armstrong legislation we regard that particular clause as quite essential to give public knowledge of the preservation of the relative rights of the policy holders of the past under the former régime and of the future policy holders coming under the very new and different conditions that will begin in New York with 1907. I would say, further, in speaking of these provisions—Nos. 11 to 16—

Mr. AMES. You are speaking, now, of one of the sections under the heading "Standard forms of returns of life insurance companies?"

Mr. SCOVEL. Yes.

Mr. AMES. You believe that there should be standard forms provided in a model code?

Mr. SCOVEL. It occurred to me, Mr. Ames, that the use of the word "form" here was probably what led to the misunderstanding apparently in President Bulkeley's mind this morning. The uniform form or blank that is adopted by the Commissioners was what I think he had in mind. This section simply calls for additional information not contained in that usual form. It adds to the annual inquisition of the past some of those points which the Armstrong committee investigated that were not included in these annual inquisitions of the past; and it says that year after year those things must be given publicity as well. That is where, gentlemen, there is a new protection and a new safeguard, the greatest safeguard of all for generally decent and fairly economical management. Of course you can not make men honest by law. There will be abuses by somebody, and money will be stolen. There will be rogues and rascals—though there have been fewer in the insurance business than in almost any other. The law that attempts to make it impossible for a rascal to do a wrong thing with machinery will make it very hard for the engineer to run it at all. I think that is the fundamental difficulty with the attempts that are being made. This provision for publicity that

year by year makes plain to everybody those things in the conduct of each company which the Armstrong committee was bringing out, we desire to advocate on principle; saying, however, that we do not express any opinion as to whether the same results might not be obtained in simpler form. That is an actuarial question of detail, as to which we would hope that the committee would endeavor to work it down so as to inflict the least cost for clerical work and preparation. These elaborate reports entail much labor and expense at best. Yet I regard that full publicity as perhaps the most important feature of the bill.

With that publicity which discovers wrongdoing, and then with the penal sections which define carefully and bring more close the punishment for wrongdoing when discovered, you have got what Anglo-Saxon law has always adopted as the best way to provide for the right conduct of business affairs in everything else; and I believe that that will be enough in life insurance.

I am glad on behalf of the underwriters to urge the passage of the antirebate provision, which we have secured the passage of in many States.

I also desire to say on behalf of the underwriters' association that we approve especially the clause providing for no new assessment organizations and for the proper reorganization of those that desire to enter upon the old-line basis.

Mr. STERLING. You say you oppose the organization of new assessments?

Mr. SCOVEL. Yes, sir. I do not pretend to answer actuarially on this business, but I say this, that in my own experience of only eight or nine years the number of people that I have seen suffering from the failure of those—

Mr. STERLING. I have seen a great many of them benefited from them, too.

Mr. SCOVEL. So have I; and I am not attacking it in toto, but I think it has served its purpose.

Mr. STERLING. It is the poor man's insurance, and I do not think he should be deprived of it. Of course they have got to be conducted honestly.

Mr. SCOVEL. The trouble is that they are bound to come to a point where the original level of premium can not maintain the risk.

Mr. STERLING. In the meantime the policy holder has only paid just what the insurance cost.

Mr. SCOVEL. Yes; but he can get that from the old-line companies upon the term insurance basis. That is one reason why I urge the formation of more companies. One of the things that I think has been wrong in life insurance has been the disposition of many of the old-line companies to turn their backs upon term insurance. I think that is a great public service, which some companies have not been doing, but which it has been their duty to do, and which I hope to see done more fully. That is what should take the place of assessmentism, and that is what is proposed here, to some extent, when these companies can put themselves upon a basis of reserve. And it avoids future disaster to those who wish insurance, to have them put upon a sound basis.

The ACTING CHAIRMAN. The old-line companies can do the term insurance cheaper?

Mr. SCOVEL. No, sir; I do not say they can do it cheaper, but they can do it as cheaply. This does not apply to fraternal, in which the fraternal element should be the principal thing, and in which insurance, if there at all, should be incidental, as sick or burial benefits. I believe in the true fraternal idea, which presents a different phase entirely.

So much for what this bill will do and ought to do inside the District of Columbia. That its effects outside will be eminently desirable is evident. The present need of it has been emphasized, the desirability of uniformity of legislation at a time when legislation is more than usually likely to be hasty or ill-advised or prejudiced and when such legislation is going to be enacted or brought up before the legislatures. For Congress to take the lead with a model code would be a good thing at present. In like manner, on through the years, it would be a good thing if Congress should authorize the establishment of a bureau here which would have the right, upon request and under proper terms, to make examinations at the request of the commissioners elsewhere. We think that the erecting of an authoritative and dignified examining bureau, ready to do such service as a part of its work in the District of Columbia, would be an eminently good thing and would tend to do away with some of the burdens and evils of the past.

I also think that in that connection it is well for the committee to consider the provisions of the bill that give this bureau special relation to the examination and deposit of alien companies entering the United States. As to them a bureau in the District of Columbia would have some very particular advantages, advantages both in dealing with that which was abroad, and advantages also in holding funds as trustee not only for citizens of the District of Columbia, but for citizens of the United States generally.

I would suggest with diffidence—considering the question of whether this bill is to be purely a municipal measure or a national, Federal measure—the possibility of extending some of these provisions to the Territories and insular possessions. This could be done, certainly, with the antirebate and assessment sections; and I think, no doubt, a few others could readily be made to apply definitely to the Territories and insular possessions, which would be a proper protection of their inhabitants against the same evils that we are talking about here.

The ACTING CHAIRMAN. Would it be safe to say simply that no company not authorized to do business in the District of Columbia should do business in the Territories? Would that be safe?

Mr. SCOVEL. Hardly. There would be local companies which should be encouraged that would not probably come clear over to the District of Columbia.

The ACTING CHAIRMAN. Then would it be safe to say that no company should do business in the Territories which was not authorized either by Territorial law or by being authorized to do business in the District of Columbia?

Mr. SCOVEL. I should think, at first blush, that something on that line would seem to be possible, without having to erect at each island an elaborate investigating bureau.

The ACTING CHAIRMAN. It would be impossible to erect a bureau for each Territory.

Mr. SCOVEL. Yes; that is why I say that something like that might be possible—as to only so much of the bill as could be applicable without the machinery, which I can see would be too expensive and not worth while to establish in each Territory and insular possession. But it can be made a strictly Federal measure if desired by this committee. The section forbidding political contributions is a thing that goes outside of a mere insurance code, applying to other corporations as it does. So I thought I could see various elements through which, if the committee did not care to trouble Congress with a mere municipal measure at this time, the bill might be given a more general importance and a direct application to the Territories and insular possessions—all of which might help as a make-weight toward its passage and be at the same time directly in the line of the duty of Congress to legislate wisely for these possessions as well as for the District of Columbia.

Finally, and without any argument on the subject, I wish to say that we would be glad if four points were eliminated or changed in the bill—points of consequence: First, the matter of limiting contingency reserve. That appears in the bill. It did not appear in the report of the Chicago committee. That report specified the various things that the Armstrong committee had limited, and after discussing them it refrained from approving any of them, including that special limiting of contingency reserve.

Mr. STERLING. That is, the reserve over and above the legal reserve?

Mr. SCOVEL. It is margin; it is surplus. It is an amount to provide for contingencies of all kinds and characters whatever. It is the entire fund over and above the legal reserve—all that the company is allowed to hold, after declaring its annual dividends. It must declare every other cent in dividends and pay them out.

Second. The standard life policies. We do not feel that there is any need for the whole system of standard life policies, for the cumbersome preparation of elaborate forms, when it is necessarily provided that others may be authorized when needed by the companies.

Third. If the forms are retained, then there arises a matter of principle that I would like to make clear. The forms provide that the dividends may, at holder's option, be left with the company, accumulating at interest. We suggest as a better option that the dividends may be left to buy each year pure endowment insurance, payable at an age named by the policy holder. To make this clear, let us first look at the case where a man has lapsed an endowment policy and has not made any indication of what he wants done. In such case the bill automatically exercises this option for him. I read from the amendment which is intended to go here on page 49, regarding surrender values:

Provided. In case of any endowment policy, if the sum applicable to the purchase of temporary insurance shall be more than sufficient to continue the insurance to the end of the endowment term named in the policy, the excess shall be used to purchase in the same manner pure endowment insurance, payable at the end of the endowment term named in the policy on the conditions on which the original policy was issued.

That is to say: Suppose that a man lapses a twenty-year endowment policy for \$1,000 at the end of seven years, and that the money he leaves behind is enough to pay the term cost of that thousand dollars of insurance for the remaining thirteen years, with some over—

some "change." This section provides that this change shall be applied as a single premium to buy whatever it will pay for of pure endowment payable at the end of the twenty-year period.

We would like to see the equivalent of that provision substituted in the annual dividend clause, where the option now given has been said by many to be one that nobody cared for—the option of leaving the money with the company to accumulate at interest. That is a mere savings-bank function, wholly outside of the function of life insurance.

I would suggest that, whenever the policy holder chooses to leave dividend money with the company, he might well be allowed to leave it upon the same basis that the law selects for him when there is some "change" coming to him over the term cost of the remaining end of an endowment. It is exactly the same principle and the corresponding application of it, year by year, as the dividends accrue.

Then, gentlemen, having done that, I should think that you would see the way clear to say, allow the policy holder to exercise that same option once for all at the beginning of his policy. Then you have what has been given a very bad name, under the title of a "deferred dividend." You have already got it here in this provision for the man who lapses his policy. The law selects for him a deferred-dividend arrangement, so to speak. It is exactly the same thing in principle to allow a man, if he wishes, to defer his own dividends, which means simply to invest them in pure endowment insurance. An annual accounting I most heartily believe in. I would not dream of having that omitted from the bill—an annual accounting in the most elaborate shape, for every dollar of surplus, whether annually distributed or not. That will cure the past abuses in handling dividend funds. The principle of the deferred dividend is the principle of the pure endowment. It is a part of life insurance science as studied and practiced all over the world. It is a part of the compulsory system in Germany, whereby the workman is compelled to lay aside a small sum every pay day, from which he will get no return except he reaches the age of 60 or 65. That is your forfeitable deferred-dividend idea. By that means, the contribution of a small premium by many will produce a large result for those upon whom the risk finally falls. The insurance hazard of surviving to old age is exactly corresponding and complementary to the hazard of death. I hope to see those principles adopted. I do not stand for them in any particular way; our association believes in both annual and deferred dividends, honestly handled. But for completeness, in talking about a model code, I believe that the forbidding of the deferred-dividend principle—not its abuses, which are being rightly forbidden, but the principle itself, which is the pure endowment principle, and as such is applied elsewhere by automatic operation of the bill—is inconsistent and unscientific and undesirable.

Finally, the only other point that I want to make has already been mentioned—that we do not see any real reason why the same company may not write both participating and nonparticipating policies. They have been habitually doing so. Noticing that one of the proposed amendments to the printed bill still preserves that right to stock companies, we can not see any real reason why it should not be extended to all companies. It has been in the past the common practice for companies generally to do so, and by now amending to allow

stock companies to do so, it seems to be agreed that there is nothing wrong in principle about joining the two classes of policies under the same company.

The ACTING CHAIRMAN. But that would be making the mutual policy holders a stock company to sell insurance to others, and subjecting them to the risk of loss on that business.

Mr. SCOVEL. Normally giving them the profits from that business, if you please, for it would be very exceptional and a case of bad management if the nonparticipating business did not yield some profits. The mutual policy holders are already partners and owners of the company. We see no reason why a cooperative store may not have a window through which it sells to others than members.

The ACTING CHAIRMAN. But they did not agree to go into the company upon the idea of participating in anything but insuring each other.

Mr. SCOVEL. That is what this law would authorize and warrant, and it has been the common practice in the past. The first difficulty suggested was that it was difficult to maintain the equities between the two classes, but it is really no more difficult than to maintain the equities between term insurance and endowment insurance or between young and old lives or between standard risks and substandard risks. All of those problems of maintaining the equities between classes are the very business of life insurance, and there seems no reason to single out that one problem as something impossible to manage.

I thank you very much, gentlemen, for your attention.

(The committee thereupon adjourned until to-morrow, Thursday, May 17, 1906, at 10 o'clock a. m.)

COMMITTEE ON THE JUDICIARY,
Thursday, May 17, 1906.

The committee this day met, Hon. R. W. Parker in the chair.

**STATEMENT OF MR. W. C. BALDWIN, VICE-PRESIDENT OF THE
PITTSBURG LIFE AND TRUST COMPANY, PITTSBURG, PA.**

Mr. BALDWIN. Mr. Chairman and gentlemen of the committee, I believe it is necessary to limit the expenses of securing new business, and in order to accomplish this I believe it is necessary to build a new valuation; and as the chairman has suggested that we take a subject or point, I will use that to talk from to the best of my ability and belief.

The insuring of lives has to do with an increasing hazard, and therefore the necessity of creating a reserve to meet that increasing hazard. That having been established many years ago—more than a hundred years—the present valuation of policies was worked out on such a plan and used pretty generally up to this time.

As an illustration, I will take an ordinary life premium, or rather the premium for an ordinary life policy, on a life 35 years of age. This premium is used by two of the older companies—the Equitable and the New York Life—who charge for such a policy \$28.11. It is known as a 3 per cent reserve premium, and the net portion or

reserve would be \$21.08. Therefore, the other portion of the premium, or that which is intended to be used for expenses, would be \$7.03, or 25 per cent. It was stated here yesterday by one of the speakers that the loading on some premiums was 50 per cent. I do not think he intended to say that, because I do not think there is that much loading on any premium.

Mr. ASHBROOK. If you will pardon me, he said 70 per cent.

Mr. BALDWIN. He surely did not intend to say that. When interest earnings were higher, less money was needed to be put in the reserve, but in order to get along as rapidly as possible I will not discuss this as I am not an actuary, and will pass that by. However, assuming that the loading or the provision made in the building of the premium for expenses is 25 per cent of the premium I am now using to illustrate from, and if the expense of getting new business at the present time is, as was demonstrated in the recent Armstrong examination, from 40 per cent to as much as 400 per cent of the first premium, it is necessary to use the excess expended above the loading on the first premium from other funds, and the point I want to make is that if there is but 25 per cent loading on the first year's premium, and it costs, we will say, 100 per cent as an average to secure business, 75 per cent must be secured from some other source, as required by the present valuation, in addition to the reserve, and under the present system it is borrowed or rather anticipated from the loading or expense portion of renewal premiums, and as a small company has few renewals, it can not borrow, as it has not that source that an older company has to borrow from; hence can not compete, and the older companies assume that as the premiums are paid, this 75 per cent that they borrowed will be paid back as renewal premiums are paid, and assuming that 100 per cent has been used for securing business, if premiums on the policy were paid for four years, you can readily see that the 100 per cent would be received from that policy holder. However, if it is not renewed for four years, that business has been secured at a greater cost than the provision made for expenses, and while it was stated here yesterday by one of the speakers that he never learned or knew of any actuary claiming that new business should be secured within the provisions made in the first year's premium, I, for my part, have never had an actuary state to me that the original intention when the present premiums were constructed was not that the expenses should be the same each year, the first year and thereafter, and it is a fact that the actuaries are at the present time trying to work out a valuation suited to the present conditions, thereby admitting that the present valuation does not conform to the present system upon which the life insurance business is transacted.

A great many of the older insurance men will state to you that they wish they could go back to the days when they received 10 or 15 per cent on the first year and a renewal thereafter. I have friends who have been in the business a great many years, and they say when they worked for 25 per cent and a certain number of renewals that they made more money than they have been able to make in recent years, because there was not the waste, there was not the rebating, and there was not the extravagance in a great many ways that has crept into the business. You may think it strange that I talk this way, as I represent a new company, as speakers

have told you that the new companies need a lot of leeway in order to get new business. I believe that the new and small companies should be compelled to get the business within the provisions made for expenses in the first year, just as the larger companies should, giving the small companies just an even break with the older companies. They will then still be at a disadvantage, as they can not use the margin on renewals to open branch offices and to establish general agencies, as a new company has no renewals the first year and but a small income for a number of years, and therefore can not anticipate or borrow the loading on renewal premiums to use for expenses in getting new business, and this is just what should be prevented by law, and then you will make it possible for new and small companies to build up a permanent, substantial institution in any district in the United States where, in the judgment of men that understand the business, there is an opening for a life insurance company.

You will thereby prevent the concentration of such enormous funds in New York or any other point, and, gentlemen of the committee, when a United States Senator makes the statement here publicly that in ten years from now a few of the life insurance companies will control the finances of the country, it is your duty to prevent it if you can, and if you frame this bill so it will not be possible for one company to spend a greater sum to place new insurance on their books than a competitive company can pay, you have, I believe, prevented the possibility of any group of companies controlling the finances of this great country.

Some of the very best companies in the country have lived within the provisions made by either the select and ultimate or the modified term, which our company adopted and has used to the present time. The evils that can be applied in permitting the borrowing, loading, and advancing I think it only proper that I should mention. Assuming that a general agent is given a contract for a large territory at, say, 50 per cent commission the first year with $7\frac{1}{2}$ per cent renewal commission for the life of the policy, or say nineteen years after the first year (some of the conservative companies do not extend the renewal commissions so long), and assuming that the general agent wants to buy business, believing that his renewals will average, say, ten years, that general agent can use his renewal commissions by anticipating them, and he pays a first-year commission of, say, 65, 70, 80, or even 95 per cent. Now, the new company has no renewals and small companies but few, therefore their general agents have no income from which to borrow to enable them to buy new business with at a greater cost than the provisions made in the construction of the premiums for expenses during the first year.

The ACTING CHAIRMAN. Who does he pay the 90 or 95 per cent to?

Mr. BALDWIN. To the agent. I may state that I am not partial to any system of the construction of premiums. I am trying to show that the old system for valuing policies is not applicable at the present time, but the old companies do not need to change. However, some of the actuaries admit that the select and ultimate, which is the valuation adopted in New York, or the modified preliminary term, are either practical and safe.

Some of the best actuaries in the United States have publicly stated

that the select and ultimate is scientific. I believe no valuation of policies has ever been built with so much data to work from as the select and ultimate, because it was built recently and data was gathered from all over the world to work the valuation from, and it was worked particularly to enable new companies to start and to place small companies on an equal footing with the larger companies, and as it is worked on a basis of about 50 per cent mortality the first year, 65 per cent the second year, 75 per cent the third, 85 per cent the fourth, and 95 per cent the fifth, it should be safe, and as the actuary of one of the large companies stated here before you yesterday that there was more saving than the percentages mentioned in the select and ultimate valuation, and that the mortality did not reach 100 per cent until after the fifth year, therefore the select and ultimate must be safe, and the actuary that appeared before you admitted that there was more saving in mortality, taken as a whole. One company may have an excessive mortality for a year or two, but, taking it as a whole, the mortality does not reach the 100 per cent among all companies until beyond the fifth year. Therefore, if there is a saving in mortality to enable companies to pay 67, 75, 85, and 95 per cent commission the first year, it is certainly safe. Therefore why not value accordingly and make all companies work on one basis, not giving larger companies advantages over small ones? The modified preliminary term makes practically the same allowance for expenses, and by some is classed as the same valuation as the select and ultimate. It is not arrived at in the same way, but it gives about the same margin to the companies using it.

The reason it is necessary to have some different valuation is to get more money to use during the first year, for the reason that the conditions are entirely changed to-day from what they were when the old way of building the premiums was arrived at. A great many people lived those days for, say, \$500 a year. The same men to-day in the same business would probably spend \$1,000, \$1,500, or \$2,000. The business was secured then within the provision made for expenses during the first year. Why not now? I do not pretend to state that there is no necessity for the spending of more money for securing life insurance than it was necessary to spend then, because every man in the field must make more money, and he should make all the money he is entitled to, but there has been too much waste in the business, and it has been authorized to some extent from some of the home offices. The system of extending the general agent's renewals, as has been done in the past, is wrong. It permits a general agent to pile up too large an income. He can use that income to pay more for the business the first year than the company has agreed to give him and more than it has authorized him in his contract to pay.

Mr. BIRDSALL. When and where was that system inaugurated, instead of paying a flat rate to the agent?

Mr. BALDWIN. According to my understanding, it was the original plan, adopted probably fifty or sixty years ago, to pay the same the first year as thereafter.

The ACTING CHAIRMAN. Like paying commissions on rents?

Mr. BALDWIN. Yes, sir.

The ACTING CHAIRMAN. You give him a commission on the rent as it comes in?

Mr. BALDWIN. Yes, sir. I have no criticism to make of anything that has occurred in the past, but the present conditions are different, and it is absolutely necessary to have a new valuation.

The ACTING CHAIRMAN. Under the conditions which you have mentioned, up to about twenty years ago, dividends were declared in proportion to premiums contributed on the first rate. Now they are declared in proportion to the reserve that has accumulated on a particular policy.

Mr. BALDWIN. I would rather not talk on that point, as the actuary apportions the dividends.

The ACTING CHAIRMAN. I am simply seeking to ascertain whether more dividends come back under the old plan than now.

Mr. BALDWIN. Hardly any dividends came back from the first year, but more dividends come back prior to twenty years than in the last twenty years.

Mr. ASHBROOK. Under the percentage plan the dividends of a company being successful were likely to be somewhat uniform throughout. Under the contribution plan it starts in at a low rate and progresses every year and finally reaches a much higher rate than the percentage rate.

Mr. BIRDSALL. The point I was getting at is, Upon what theory or basis is the general agent or the division agent, after being paid a liberal salary, entitled as well to a commission on renewals?

Mr. BALDWIN. The best companies do not pay a salary on top of commissions. What I consider a first-class company would pay from 40 per cent to 50 per cent commission the first year—that is, on an ordinary life premium—and a renewal commission of $7\frac{1}{2}$ per cent running from ten to twenty years and in some cases for the life of the policy. Those companies I have referred to do not pay any salaries, any branch office expenses, or any compensation of any kind in addition to the commissions which I have mentioned.

Mr. BIRDSALL. They deem that equivalent to what they would have to pay in salaries, and it also enlists a little more interest in the business?

Mr. BALDWIN. Yes, sir. I believe that notwithstanding the fact that the general agent may be entitled to any of the commissions I have named, he should not be permitted to use any commission or any money to secure new business in addition to the amount that is provided for in his contract for commissions on the first year's premiums.

Mr. BIRDSALL. Is it customary for the general agent to subdivide these renewals with the field agent?

Mr. BALDWIN. Yes, sir; in some cases. That is left to him, just as a dealer in any commodity. He would get some of the business without any renewals, some with a few renewals, and some with a greater number of renewals. Now, have I answered your questions satisfactorily?

Mr. BIRDSALL. Yes, sir.

Mr. BALDWIN. The reason that I believe that the limiting of the expense of securing new business is necessary is that if it is not limited by the law the general agent will use some of his renewals and pay a larger commission in securing the business than is provided in the construction of the premium. Therefore, a small or new company can not exist in competition that will permit of more money being spent in the securing of new business than is provided for in the

construction of the first premium, and according to the present basis of valuation used by the old companies—and they all of them object to the select and ultimate or modified preliminary term—the new company or a small company would be charged with more reserve than is required during the first year. Therefore they would show an impairment at the end of the first year that they might not show if there was a limitation of expenses providing for expenses not exceeding the provision made for expenses in the construction of the first premium.

Your bill, as originally framed, permitted the applying of all first premium for term insurance. A great many companies have applied all premiums as first year term premiums in order to try to exist in competition with the old companies. All companies that have applied all premiums as first year term have not been able to pay much in the way of dividends to their policy holders, and by taking the Handy Guide, which is published and sold by the Spectator Company of New York, any of you gentlemen can run your finger down the column which indicates dividends paid to policy holders, and you will find that any company that has applied all premiums as first year term have paid scarcely any dividends or have scarcely any surplus to the credit of the policy holders; but, mark you, do not stop when you consider the companies that have applied the premiums as first year term premiums and conclude that they are the only ones that have paid small dividends or have accumulated little for their policy holders, as you will find in this same book the companies referred to in the Armstrong committee report as having paid from 100 to 400 per cent in the way of first-year expenses for securing business, and some companies have paid salaries on top of the contracts. These companies have paid scarcely any dividends to policy holders and have accumulated scarcely any surplus to the credit of their policy holders. I refer to this for the reason that I want to impress upon you the fact that no company can pay the price that has been paid for business and also pay to their policy holders what they have illustrated they would pay, and the old companies have not been able to pay as large dividends as they did when conditions were entirely different. However this is partly accounted for by the lower rate of interest and, of course, the necessity of the agent receiving more pay, as the cost of living is higher now.

Mr. STERLING. Are the rate of the premiums about the same in all companies?

Mr. BALDWIN. With the same guaranties in the policy they are very nearly the same. The impression has gone out that premium rates are higher in America than in other countries. That is not true. Take an ordinary life premium at 35 years of age and take the average premium of the companies in the principal foreign countries and I believe it is about \$29 and some cents; whereas take the average premium of the principal companies in this country and it is \$2 and some cents less than in the foreign companies. That is explained thoroughly by the fact that the interest rates are lower there than here, and as the interest rate goes lower here in our country the higher the premium must go, and probably in twenty or thirty years life insurance will cost more here than to-day; that is probable.

Mr. LITTLEFIELD. Do you mean to say that life insurance costs more over there than here?

Mr. BALDWIN. Yes, sir.

Mr. LITTLEFIELD. Our own companies maintain the same limit of premium abroad as at home?

Mr. BALDWIN. I am not prepared to say; but I am positive in some countries our home companies charge a premium for an extra hazard. This usually refers to tropical countries, and our home companies do not write deferred dividend policies in some foreign countries.

Mr. GRAHAM. In France they charge \$1 additional on the policy, and in Russia it is the general practice to charge a materially higher premium. It is a matter of law.

Mr. BALDWIN. As I have just stated, that applies principally in tropical countries and where the hazard is greater.

Mr. LITTLEFIELD. All companies do that, foreign and domestic companies?

Mr. GRAHAM. Yes, sir; they all meet those figures. There is an effort to discourage companies in foreign countries from issuing policies at a low premium, and, on the other hand, there is an effort to discourage the American companies from paying large commissions to agents; and in Germany there is an absolute rule that prevents companies from paying commissions above a certain figure. That is to protect the home companies.

Mr. LITTLEFIELD. What company do you represent?

Mr. GRAHAM. I am just now from Minneapolis. I have been on the Northwestern National. I have been associated with the insurance commission.

Mr. LITTLEFIELD. What is your name?

Mr. GRAHAM. William J. Graham.

Mr. BALDWIN. While at this point I would like to give my objection to the applying of all premiums as first-year term. For instance, if the premium is, on the ordinary life policy, \$28.11 at age 35, and the premium on a ten-year endowment at the same age is \$100, the way this bill is framed the company could use \$96 of the \$100 for expenses. The company has guaranteed in that ten-year endowment contract to pay the insured a thousand dollars at the end of ten years, and in a great many cases they have made illustrations showing the insured that they will pay him a lot of dividends besides. They have used practically all of the first \$100 for expenses; therefore the responsibility is thrown on the company to pay a thousand dollars out of the remaining \$900 which would be received from the nine renewal premiums, and they also have to pay to the general agent a commission on the renewal premiums, and should they make any losses in investing the money they would also be compelled to make up such losses out of the \$900.

I do not believe any company that has applied all premiums as first-year term carries out a ten-year endowment contract on its own resources; that is, that policy, when it is carried out, is carried out from the income received from some other policies.

Mr. LITTLEFIELD. You mean that the policy does not take care of itself?

Mr. BALDWIN. Yes, sir.

Mr. LITTLEFIELD. What is your company?

Mr. BALDWIN. The Pittsburg Life and Trust Company. We paid for \$3,405,951 of insurance last year.

Mr. LITTLEFIELD. That you actually wrote?

Mr. BALDWIN. Yes, sir; written and paid for.

Mr. STERLING. You paid that much in losses?

Mr. BALDWIN. No, sir; we secured that much new business. The kind or plan of the policy has all to do with the amount that you have to use for expenses, and the percentage of plans of the above amount are 47.5 per cent on the ordinary life plan; 35.2 per cent on the limited payment life, which would be ten, fifteen, or twenty payment life policies; 6.1 per cent on the endowment plan and 11.2 per cent on renewable term policies, making the full 100 per cent. It cost us of the first-year premiums, including all commissions, compensations, traveling expenses, medical and inspection fees, half of the medical director's salary and half of the secretary's salary (for the reason that they devote part of their time to the agency department), 77 per cent of the first year's premiums.

Mr. LITTLEFIELD. Those are the administration expenses?

Mr. BALDWIN. Yes, sir; for new business, not the home office. It costs us 77 per cent of the first year's premium on all of the business. The select and ultimate valuation provides for 66 per cent of the ordinary life premium to be used for expenses. Therefore we fell short 11 per cent—that is, we spent 11 per cent too much according to the select and ultimate valuation. Now, could we not have been able to secure our business 11 per cent cheaper if the older companies were not paying 75 or 85 or 95 per cent for new business right in the same town, and with the agents of thirty-five or forty companies all saying to the insuring public: "It is a new company; would you go into a new company? You do not know whether it will succeed or not."

Now, in addition to the expenses of 77 per cent of the first year's premiums, it was necessary for us to place in our reserve as a liability \$35,716, being the reserve required for the carrying out of our policies as modified preliminary term, which means to apply the ordinary life portion of any premium as first-year term, or, in other words, you can use it all for expenses except the net term reserve which is required to pay the death losses the first year, which would average about \$4 a thousand. In other words, you have about 87 per cent of the ordinary life premium on the first year modified preliminary term valuation for all expenses connected with the issuing of new insurance.

Mr. STERLING. What is the 87 per cent?

Mr. BALDWIN. For expenses, including every expense that is connected with the securing and issuing of the new business.

Mr. STERLING. And the \$4 a thousand.

Mr. BALDWIN. That is supposed to be required to pay the death losses that occur during the first year the lives are insured. That would leave \$96 out of each \$100 to be used for all other purposes. That is of the ordinary life premium only.

Mr. STERLING. You say that an ordinary life policy at age 35 years would cost about \$30?

Mr. BALDWIN. \$28.11 is the premium used by the large companies.

Mr. STERLING. And you say \$4 of that would be necessary to pay death losses for the first year?

Mr. BALDWIN. About \$4 and a few cents or less than \$4, according to age.

Mr. STERLING. How much of that amount is it estimated would be required to go into the reserve to pay the increased risk on account of the increased age of the man?

Mr. BALDWIN. None of it; not that year. About \$4 would be required, as stated above, to pay the death losses that would occur during the first year of insurance. The next year you put in a little more to provide for the increasing hazard.

Mr. STERLING. Is that all that is necessary?

Mr. BALDWIN. \$21.08 where you are providing for the whole life—I mean to insure clear through life.

Mr. STERLING. \$21.08 makes the amount necessary to pay the losses of the year?

Mr. BALDWIN. And also to provide for the increasing hazard clear through life.

Mr. STERLING. That would only leave \$7?

Mr. BALDWIN. \$7.03, or 25 per cent.

Mr. LITTLEFIELD. The fact is that that gives you so much to get the business the first year, increasing the amount you have to reserve the succeeding year?

Mr. BALDWIN. Yes, sir. If you use more the first year you must put in a little more each succeeding year. The select and ultimate or the modified preliminary term provides for that exactly, for the using of more the first year and accumulating the excess you use the first year later on.

The ACTING CHAIRMAN. What do you mean by the 87 per cent?

Mr. BALDWIN. Eighty-seven per cent of the ordinary life premium is permissible to be used for all expenses on new business during the first year, applying the ordinary life premium only as preliminary term.

The ACTING CHAIRMAN. Can you state the amount of the total premiums received on all classes of insurance by your company?

Mr. BALDWIN. Yes, sir. We received on this business \$106,612.27 in premiums, and the ordinary life portion of those premiums was \$66,655.

The ACTING CHAIRMAN. That includes the ordinary life portion of the endowment policies and everything?

Mr. BALDWIN. Yes, sir. Under the modified preliminary term, using it as we do, and the insurance by plans the same as secured by our company, as just stated, there would be 66 per cent of the total premiums to use, or, if all the insurance we had written was ordinary life, we could use for all expenses in issuing that new business, 87 per cent. To give you the exact condition that we were in after providing the reserve on the business, which reserve amounted to \$35,716, we had to secure from other sources \$11,359.10, or, in other words, the reserve (\$35,716) and expenses (\$82,255.37) amounted to \$117,971.37, or about 110 per cent of the total premiums which we received. Therefore there had to be \$11,359.10 taken from other funds or income or out of contributed surplus, which would have to be contributed if it was a new company. Fortunately, the last year being the third year we had done business, we were able to increase our surplus about \$14,000.

I would like to impress this very strongly on the committee.

I believe that the old valuation will prevent new companies from starting, that either the select and ultimate or the modified prelimi-

nary term or some valuation that may be constructed that will provide more of the ordinary life portion of the premium for first-year expenses is absolutely necessary. Your bill should provide that no money not provided for expenses in the construction of the first year's premium shall be used in securing new business, or if any is used, that the bill shall state what amount shall be borrowed or used from other funds. I have sometimes thought that the Armstrong bill, as constructed, limiting the expenses and loading according to the select and ultimate, and limiting the renewals to the tenth year, might have provided that 7½ per cent might be borrowed from the second premium, and, having used that much more the first year, that if it is thought necessary by your committee that the general agent shall be allowed a renewal beyond the term provided for in the Armstrong bill that the renewal could be extended to the eleventh or even including the twelfth year.

Mr. STERLING. Would it be a very difficult matter to compute what per cent of all premiums the company takes in would be necessary to pay the expenses, with an idea now of limiting by law or saying that companies shall be permitted to apply 5, 10, 20 per cent, whatever per cent is necessary of all premiums, not to exceed that amount of all premiums collected, to pay the expenses of operating the company and not confining it to the first year's premiums?

Mr. BALDWIN. No, sir; for the reason that a new company or a small company could not live at all under that plan, as the larger companies would be able to spend an amount that would make it impossible for small companies to live. That is exactly what the larger companies are doing now. They are using a certain percentage of their income from renewals to buy new business at an excessive cost, and by so doing they are strangling the small companies and practically preventing new companies from starting, just as the so-called "trusts" in their lines are doing.

Mr. STERLING. It seems your company has gotten along with much less expenses than others.

Mr. BALDWIN. We had to contribute the first two years.

Mr. AMES. Does not every new company contribute?

Mr. BALDWIN. If your bill was to provide as I have outlined it would not be necessary for any company to make any provision for contribution to secure new business. It would be necessary for them to make provision to pay their fixed charges for their home office for whatever length of time they figure that it would be until they had margin enough from renewal premiums to support their home office.

Mr. AMES. Is not every new company compelled to pay out practically \$2 for every dollar received?

Mr. BALDWIN. Yes, sir. That is just what we claim should be avoided.

Mr. AMES. There are ways to get around it?

Mr. BALDWIN. If some one can figure it out I would like to see it.

Mr. AMES. There is the Columbia National Company of Massachusetts.

Mr. BALDWIN. The Columbia National has used, according to the last statement of their operating company, about \$3,000,000 that they have secured by peddling the stock of the operating company over

the United States, and in a great many cases sold it with such misunderstanding that there will be more dissatisfaction connected with the operations of that institution than there ever was in connection with any life insurance company in America.

Mr. AMES. I understand they organized two companies under practically the same ownership and control—an insurance company and a securities company.

Mr. BALDWIN. The securities company is composed of some people who own none of the life insurance company's stock, and the control of both is held by a few individuals, and they have assigned under a contract all of the loading on all premiums to the operating company.

Mr. AMES. For a certain number of years.

Mr. BALDWIN. How long is that?

Mr. AMES. The commissioner of Massachusetts ruled, I think, that it was for twenty or thirty years.

Mr. BALDWIN. That would be long enough for the policy holders never to get anything, and the stockholders of the operating company will be tired out also. I think it is the worst business proposition that was ever permitted to be carried on in the United States. I think it is against public policy.

Mr. DE ARMOND. Whereabouts is that company located?

Mr. BALDWIN. Boston, I think; and I believe it has been taken up by the insurance commissioner of Missouri and some other States with the idea of preventing its operation in the sale of its stocks. The impression has been created here that nearly all of the underwriters are opposed to the limitation of expenses. I have not found it so. I am a member of the Underwriters' Association of Pittsburg, and Mr. Scovel is a very dear friend of mine, and he has been very nice to me, and our local underwriters' association has been very courteous to our company; but I do not believe that the recommendation that was supposed to come from the underwriters' association as to your bill, etc., was voted on by the whole association. I think it came simply from the executive committee. I find that the best men in the field want the expenses to be limited because they do not know where expenses will stop, whether companies will borrow and spend one, two, three, four, or five years of the loading to buy new business. I think that if the expenses of buying new insurance are limited and a valuation provided that will give a margin, as I have indicated, there will be very little necessity of other changes in your bill.

Does this act permit a company operating under a charter of the District of Columbia to have its home office in another district?

Mr. AMES. I do not think it does.

Mr. BALDWIN. I think that would go a long way towards simplifying matters, and I believe if the bill could be so framed that a company would be permitted, if so chartered under the laws of the District of Columbia, to have its home office in any other State or Territory, it would be beneficial.

Mr. STERLING. You do not mean to say, Mr. Ames, that a company in New York or Massachusetts or in any other State coming here and qualifying here to do business would have to have its office here?

Mr. AMES. No, sir.

Mr. STERLING. You would recommend that if practicable?

Mr. BALDWIN. I would recommend that companies operating under charters of the District of Columbia might have their home office in any other State or Territory. It would be a step in the direction of getting the companies in the other States to operate according to the rules of one department to a very large extent. If this is to be a model law, and if a company was authorized to transact the business of life insurance under a charter issued under this act, would not the other States be at least very apt to accept the examinations of this department?

Just before I left home an examination of our company was completed by the Pennsylvania department, and not knowing at all that it would be mentioned in the report of the department, I find that the report is as follows: The policies have been valued on the modified preliminary term against which no discrimination can be charged. This plan, by the way, conforms very nearly to the New York law.

The ACTING CHAIRMAN. The valuation by the modified preliminary term is mentioned in your policy?

Mr. BALDWIN. No, sir; it just appears as first-year term. We simply elect to value under that valuation for the reason that the law does not provide particularly which. That is what I think should be provided. The law should provide that the companies shall value according to what valuation is adopted by the department. I know it would save the insurance commissioner a good many hard problems to solve.

STATEMENT OF MR. GEORGE KUHN, FIELD MANAGER, BANKERS' LIFE INSURANCE ASSOCIATION, DES MOINES, IOWA.

Mr. KUHN. Mr. Chairman and gentlemen of the committee, I have not any speech to make. I am not going to read you any essay on the subject of life insurance. I am here to represent one branch of the life insurance business, the assessment insurance, or the poor man's insurance, the insurance of the plain people. There is a large class of citizens who would like to carry insurance who are not able to carry it at the high rates charged by the old-line companies. Their families are as much entitled to protection as the families of other citizens. There is a field for assessment insurance. There is a need for it. On one plan or another of assessment insurance one-half of the insurance carried in this country to-day is on the assessment plan. I speak of that to show you the importance of the measures proposed in this bill. In other words, there are 4,500,000 people carrying between \$9,000,000,000 and \$10,000,000,000 of insurance on the assessment plan. There is about the same number of men carrying insurance on what is known as the legal-reserve plan.

I am not here to say that the legal-reserve plan is not right. I believe it is good insurance. I carry some of it myself. But I should say that there is a field for the other and cheaper insurance. Companies that furnish insurance for those people for from \$8 or \$10 a thousand furnish protection enough. They do not seek to get any surrender values, any paid-up policies, any extended insurance, nothing in the case of living whatever; but, in case of death, they seek to pay a sum to the families of the insured. Now, you must admit that if that is all you undertake to do that it takes much less money to

carry that sort of insurance than it would if you had all this extra money to take care of and invest and to make proper returns of.

Mr. LITTLEFIELD. What territory do you cover in your business?

Mr. KUHN. We operate in 30 different States. None of the States south of Kentucky, Missouri, and Kansas. All the Northern States.

Mr. LITTLEFIELD. Do you carry any cash reserve?

Mr. KUHN. We have about \$9,000,000 of assets in the shape of reserve funds that have been accumulated for the protection of our contracts.

Mr. LITTLEFIELD. How much insurance do you carry?

Mr. KUHN. Something over \$250,000,000 of insurance.

The ACTING CHAIRMAN. How much would the legal reserve on that be?

Mr. KUHN. About \$14,000,000; so we are short of what would be the legal reserve of about \$5,000,000.

Mr. LITTLEFIELD. Your company is organized under the laws of Iowa?

Mr. KUHN. Yes, sir.

Mr. LITTLEFIELD. Does the law require a reserve, or is that voluntary?

Mr. KUHN. It is a voluntary proposition with this company.

Mr. LITTLEFIELD. The State does not require anything of the kind?

Mr. KUHN. No, sir. The State requires that a company shall have on hand at least the face of its largest policy that it issues, and as long as it pays its losses in full it is allowed to continue in business. When it fails of course there is a provision to wind it up.

Mr. LITTLEFIELD. How old is your company?

Mr. KUHN. It is twenty-seven years old. It was organized at the time of the great failure in the old-line companies by a banker named Edward A. Temple, who wanted insurance without investment, and he recognized that simple assessment insurance was not good; that it was good temporarily, but not lasting, and he tried to make some provision whereby the increasing death loss would be met, so he said that for each year of your age you deposit \$1 on each \$2,000 of insurance that you carry, that to be held as a guarantee that you will pay the assessments against you for a period of three months. This company collects once in three months, or four times a year, first paying the losses of the company and then calling on the policy holder to make good the losses that have been paid and as a guarantee that he will pay a man at the age of 40 years deposits \$40 on \$2,000 of insurance. If he fails to pay the guarantee is there and the lapse is taken from it.

Mr. LITTLEFIELD. What is the percentage in lapses?

Mr. KUHN. About eight lapses to every death in round figures.

Mr. LITTLEFIELD. What percentage of the policies lapse on that basis?

Mr. KUHN. It would be hard to say; I can not answer that exactly.

Mr. LITTLEFIELD. Approximately?

Mr. KUHN. Perhaps 10 or 15 per cent.

Mr. LITTLEFIELD. How does that compare with lapses in the old-line companies?

Mr. KUHN. The proportion is not quite as large as it is in the old-

line companies, or some of the companies. I presume that is accounted for by the fact that they report a great deal of business that is issued that is not delivered, or, perhaps, it is delivered for one year and appears as a lapse the next year, which makes it hard to get at the real situation.

Mr. LITTLEFIELD. Do you graduate the assessment in accordance with the age of the policy holder?

Mr. KUHNS. Yes, sir.

Mr. STERLING. At the beginning?

Mr. KUHNS. Yes, sir.

Mr. STERLING. The policy holder pays the same rate through life?

Mr. KUHNS. A man at 40 years is rated at \$40.

Mr. STERLING. And that rate is not increased?

Mr. KUHNS. It is not increased on that particular man.

Mr. LITTLEFIELD. Of what do the assets consist?

Mr. KUHNS. Seven million dollars of the assets are first-mortgage loans on real estate not to exceed 50 per cent of the appraised value of the property, exclusive of all improvements.

The ACTING CHAIRMAN. What average interest do you get?

Mr. KUHNS. It is a little over 5 per cent. In the past it has run as high as 8 per cent. At the present time it is 5 per cent.

Mr. LITTLEFIELD. Where located?

Mr. KUHNS. In the State of Iowa.

Mr. LITTLEFIELD. In your own State?

Mr. KUHNS. Yes, sir. There is a provision in this bill which says that you shall not invest to exceed 60 per cent of the funds in real-estate mortgages. We have found them to be the very best investments we can make. We have invested \$12,000,000 and have not lost one dollar, and have not a single piece of real estate on our hands from foreclosure.

Mr. LITTLEFIELD. What is the balance of your assets in?

Mr. KUHNS. Take the dollar that the man pays for each year of his age; he is allowed when he first goes in to give a note, and most men give notes. That note is payable at periods distributed from two to three years and we have, according to the statement on the 1st of March, 1906, \$1,317,000 in those notes that were not yet due; and while I am speaking of it, you may say those notes are not very good assets, and some of the commissioners have questioned whether they should admit them as assets—

Mr. LITTLEFIELD. They would not be a quick asset?

Mr. KUHNS. No, sir; but the question was whether they were good or not. There is about 92 per cent of those notes that is paid, and if you were to go to your bank and inquire in regard to the best commercial paper you would find that there was not such a large per cent of the best commercial paper paid when it fell due. We have \$1,317,000 in those notes. There was cash in bank, \$510,932—\$510,000 distributed over nearly 7,000 depository banks in the United States, so that when our assessments fall due you are given the privilege of going to the bank in your own home town and depositing the money to the credit of the Bankers Life Association. Those banks are called depositories. I think we have three here in the city of Washington. The bank gives you a receipt for your money. So there is

an account distributed over 6,000 or 7,000 banks, and in those banks on the 1st of March we had a little over \$500,000 in cash.

Mr. LITTLEFIELD. This reserve fund you have been accumulating in the course of the business of the company?

Mr. KUHN. Yes, sir.

Mr. LITTLEFIELD. How rapidly do you increase it? Do you have any arbitrary percentage by virtue of which you continue to increase it, or is that simply determined from time to time?

Mr. KUHN. That fund is divided into two funds—one a guaranty fund and another a reserve fund. When the company was organized, they sought to make provision for the increased cost of insurance in later years, and they provided among themselves that any who lapsed out of course perpetuated this \$40—

Mr. STERLING (interrupting). Does that \$40—the preliminary fee—go to make up the guaranty fund entirely?

Mr. KUHN. A portion of it; yes, sir.

Mr. STERLING. No other source?

Mr. KUHN. There is the reserve fund.

Mr. STERLING. Does the reserve fund come from the quarterly payments of policy holders?

Mr. KUHN. No, sir. The reserve fund at the present time is \$3,500,000.

I was going to explain that the company is an association and the members agree to contribute so much in case of death.

Mr. LITTLEFIELD. It is purely mutual?

Mr. KUHN. Yes, sir.

Mr. LITTLEFIELD. Are there incorporators and stockholders?

Mr. KUHN. No, sir.

Mr. LITTLEFIELD. It is purely mutual?

Mr. KUHN. Yes, sir.

Mr. LITTLEFIELD. There are no stockholders?

Mr. KUHN. No, sir; none whatever. They agreed that they should have some sort of a reserve fund for the protection of the policy holders of the future, and so they said whoever lapses out shall lose the \$40 paid in and the \$40 shall be transferred to the reserve fund. In the twenty-seven years that this company has operated that \$40, with the interest on the funds, has amounted to a little over three million five hundred thousand dollars, which they now hold. This is the only company operating on this plan, although we have had some seventeen or eighteen namesakes who have taken the name on account of the success of the company, the Bankers' Life Association of this State or of that State.

The ACTING CHAIRMAN. How large policies do you issue?

Mr. KUHN. Six thousand dollars is the largest policy we issue and the man must not be over 40 years of age. If he is over 50 years of age, he is not insurable at all.

Mr. LITTLEFIELD. You do not take them in at that age?

Mr. KUHN. No, sir.

Mr. LITTLEFIELD. Why do you not issue a policy larger than \$6,000?

Mr. KUHN. The idea has been to distribute the liability over a large number of people.

Mr. LITTLEFIELD. That decreases the liability of the company?

Mr. KUHNS. It is better to have it over a large number than a small number.

Mr. LITTLEFIELD. In other words, you would not think that it was good commercial policy to issue policies above \$6,000?

Mr. KUHNS. I would not think so. We have thousands of people who write to us and say they would like to get more and will take more insurance, but it has been the policy of the company to issue only small policies.

Mr. LITTLEFIELD. That is, you think it would be more to the interests of the company to have a larger number than a smaller number?

Mr. KUHNS. I think the danger would be greater. We take for the expense of securing this insurance about \$2 a thousand. That is what it costs. Our total expenses are limited to that \$2. We pay all the salaries and expenses of every description and save more than \$100,000 out of that fund, and that is transferred to the reserve fund.

The ACTING CHAIRMAN. Two dollars a premium?

Mr. KUHNS. Yes, sir.

The ACTING CHAIRMAN. Does that include commissions?

Mr. KUHNS. No, sir. It goes by percentage. A man at 30 years of age would pay \$7.50 a thousand, which goes to pay the agent and the medical fee, and so on.

The ACTING CHAIRMAN. Do you take any but standard lives?

Mr. KUHNS. No, sir.

Mr. LITTLEFIELD. You do not do any industrial insurance?

Mr. KUHNS. No, sir. What you heard here yesterday about assessment insurance was from the local companies that do an industrial business only, as I understand it, although they have the privilege of writing life policies if they see fit. There is a distinct difference between that class of insurance and the other kind of insurance.

Mr. LITTLEFIELD. Would you object to expressing an opinion as to the wisdom or unwisdom of either kind?

Mr. KUHNS. No, sir.

Mr. LITTLEFIELD. What do you think of industrial insurance as compared to ordinary life; is it proper or improper, wise or unwise?

Mr. KUHNS. It is said to be proper, and there are certain lines in which industrial insurance is all right.

Mr. LITTLEFIELD. What do you think about it?

Mr. KUHNS. I would not care to go into that. It is a branch of the business that I do not know much about. I never had anything to do with it. As I understand, it is largely the insurance of children—not altogether, it may be adults; but, as I understand, it is largely the insuring of the lives of children. The theory is to make good the loss that occurs from the death of the child. My idea of insurance has always been that there should be somebody dependent upon the life that is insured. It is a branch of the business that I do not feel qualified to speak about.

Mr. STERLING. Going back to your assessment, I think there is a provision in the policy that the company shall increase the assessment up to a certain amount?

Mr. KUHNS. Yes, sir.

Mr. STERLING. And this guarantee simply amounts to this, that it shall not exceed this certain amount?

Mr. KUHNS. Yes, sir.

Mr. STERLING. In theory you only collect what is absolutely necessary to pay the death losses?

Mr. KUHN. That is all.

Mr. STERLING. But you may increase it from time to time until it gets up to \$13.

Mr. KUHN. At 40 years \$14. The time when this accumulated fund can be used is when the death rate exceeds ten to the thousand. If we were to have eleven deaths to the thousand we would use the accumulated interest on the funds, and that interest would run about three more to the thousand. That would make thirteen, without touching any of the permanent funds. Then if we had fourteen, it would be paid from the reserve fund.

Mr. STERLING. Then you have an assessment every six months to pay the expenses of the office.

Mr. KUHN. Yes, sir.

The ACTING CHAIRMAN. Have you any written statement or printed statement that shows the relation between the various funds?

Mr. KUHN. I can furnish them to the committee and will be pleased to do so.

What I appeared here for in particular is section 56 of what is known as the Ames bill. That section provides that no company which depends upon an assessment upon its members shall do business in this District. Now, I want to go back a little and to say that this is not the first time that this section has appeared in proposed bills over the country, and so that you may understand, I will say that my connection with my company is that of placing all the new business. I have charge of all the agencies for the company. I direct them all, and the work is all done from my desk.

In addition, whenever any legislative matter comes up like this bill it is my business to look after it, and for thirteen years I have been a tolerably busy man and I am familiar with the legislation in some thirty-odd States.

I want to say a few words about the wisdom of passing this bill at this time and the effect that a bill of this kind will have over the country. In the first place, the insurance commissioners have every convenience for deciding what they believe to be good for insurance companies and the people at large and what ought to be done in the several States, and have tried to do the same thing in all the States, so that there would be uniformity in blanks, etc.; and the Ames bill, as I understand it, has been indorsed practically by nearly 45 of these commissioners. The idea of a model code has been indorsed by these men, and at the coming sessions of the legislatures there will be legislation in nearly every State where the legislature meets. Legislation goes by fads, the same as hats or shoes or anything else.

A measure will start at one end of the country and will go through the whole system. They get a new idea and they ride it until they get another. So there is bound to be legislation. Now, then, the question is, What have they before them for a pattern? The latest is the Armstrong product. I am not here to find fault particularly with the Armstrong provision. It is a little out of my line of business, but it is drastic and it goes too far in some ways for the best interests, I think. You can imagine what will follow when you know that 45 commissioners are favorable to a model code and think it is for the best interests of the country. You take it in many of

the States and the insurance commissioner is relied upon almost wholly as to what legislation should be passed. You take it in my State and Mr. Carroll—the chairman of the committee goes up to Mr. Carroll and says: "Here is a code, what do you think of it?" And what Mr. Carroll says about it will have a great deal of weight. These commissioners all have a great deal of weight if they are honest, and if they are not honest they are soon found out. So much for the model code.

One time when the commissioners met one of the things they decided would be a good thing was to eliminate all forms of assessment insurance, and they agreed that they would pass as far as they could in the several States some law prohibiting or curtailing assessment insurance. They sought the weakest point, which at that time was the State of Missouri, there being no local companies, and the Bankers' Life Association was the only company operating in the State of Missouri on the assessment plan. They said that will be a good point to start in to repeal the law. The bill was framed by the actuary of the department and put out as a department measure. The bill was reported in the insurance report of the commissioner, and I went down to see if I could show those gentlemen why the business should not be swept off the map. After six weeks of work through the State of Missouri the vote was 32 to 0 in our favor in the Senate. I convinced them that it was the kind of insurance that should be properly safeguarded, and that the insurance commissioner should have sufficient control under the law, so that if a company showed a tendency to do business that ought not to be done he would have the power to put it out of business.

The ACTING CHAIRMAN. Will you tell us what form of control you would suggest—how much power should the Commissioner have?

Mr. KUHNS. The rule has been applied generally all over the country that so long as a company pays its losses and conducts its business honestly and keeps a reasonable fund on hand, at least to the full amount of one assessment on all their membership, as an emergency fund, it shall be allowed to continue business. It is hard to set a standard to measure these companies.

Mr. LITTLEFIELD. What has been the experience in connection with assessment insurance the country over?

Mr. KUHNS. There have been large numbers of these companies that have failed the same as there have been large numbers of the old-line companies.

Mr. LITTLEFIELD. In connection with the failure of assessment companies, can you state what the failures were due to?

Mr. KUHNS. I think the failures in assessment companies have been largely similar to those in the old-line companies. The failures have been due to mismanagement and lack of interest, perhaps, in a great many instances. There has been a tendency not only in assessment companies but in other kinds of companies to see how much they can make out of the company for the managers of those companies, instead of seeing how cheaply they can carry insurance and how much money they could save out of the expenses to turn over to the policy holders. The one feature has been how much can we get for our own use. One company is patterned after our company. One of our agents got some money and he used our applications, and where it said "Bankers' Life Association" he stuck in the name of

another city. Then he would start a new Bankers' Life Association in another city. That company grew until they had about \$1,000,000 of assets. His provision was an improvement upon this plan. His plan was that all interest from every source and all the lapses from every source should forever go into the expense fund.

Now, the expense fund, you will understand, is a fund that is considered a legitimate fund to be used by the management—every dollar of it. If this company had followed out that idea, seeing how much interest we could take from lapses and all that, and spend it, we would have had three and one-half million dollars to spend for the management that we have saved for the policy holders, and I say that the failures have been largely due to that sort of thing. Instead of trying to conserve and look after the interests of the policy holders the question with them in some cases has been, "How much can we get for the management?"

Mr. PARKER. Do they have use for your provision that no one goes in after the age of 40?

Mr. KUHN. There is an age limit in most of them. When the company first organizes, the age limit is 65 years, and finally 50 years.

Mr. PARKER. You have got it down to 40, have you not?

Mr. KUHN. Forty for certain amounts. Fifty is our age limit. A man between the ages of 40 and 50 can get \$4,000 insurance. If he is under 40 he can get \$6,000. If he is over 50 he can get none.

Mr. PARKER. Your protection has come from that \$40 paid in at 40 years old on the \$2,000?

Mr. KUHN. That is what we are building on to take care of the increased age.

Mr. PARKER. Likewise limiting your expense to \$2,000 on the premiums?

Mr. KUHN. It averages about \$2,000. It is fixed this way: A sum equivalent to a 10 per cent assessment may be used for expenses—10 per cent. We call \$3. That is all we can use on insurance—one and one-half a thousand. But we do not use all of that, and we save \$100,000 and transfer it to the fund for the policy holders.

Mr. STERLING. Have you drawn on the guarantee fund in the last seven years?

Mr. KUHN. No; we do not draw on that until the death rate should reach 14, or something like that—twice the present death rate.

Mr. STERLING. By that time you think it would be ample to meet the increased risk?

Mr. KUHN. I think the company is permanent. I thoroughly believe that.

Mr. LITTLEFIELD. How fast is your business increasing?

Mr. KUHN. We wrote last year \$43,000,000 of business.

Mr. LITTLEFIELD. You had how many losses?

Mr. KUHN. Losses aggregating \$1,500,000 on all of the business.

Mr. LITTLEFIELD. How many policies did you sell, and how many men died? Could you give that?

Mr. KUHN. Last year?

Mr. LITTLEFIELD. Yes.

Mr. KUHN. The policies average about \$2,800, so that if you divide 43 by 3 you will have about 14,000 policies sold; and the men

who died would be about 500, would it not? Take \$1,500,000, and a third of that.

Mr. LITTLEFIELD. You are increasing that rapidly all the time—that is, you are taking in new blood all the time?

Mr. KUHN. Yes, sir.

Mr. PARKER. How many men went out last year on lapses?

Mr. KUHN. In insurance there were about seven millions, I should say.

Mr. PARKER. And how many people?

Mr. KUHN. That would be about 2,000 or a little over.

Mr. LITTLEFIELD. You lost 2,500, say, and took in 14,000?

Mr. KUHN. Yes, sir.

Mr. PARKER. That leaves over 10,000 some day to be taken care of?

Mr. KUHN. If they all stay with the company; yes, sir. A large percentage of them will lapse out before it is time to pay their death claims. A man may take insurance, for example, for the sake of his wife, and he carries it for her, and when his wife dies he allows it to lapse. He carries it just as he does a fire insurance policy, and when the wife dies he lapses. He has no further use for it. That is the case in thousands and thousands of instances.

Mr. AMES. You saved out of your new membership, last year, about \$500,000?

Mr. KUHN. Altogether.

Mr. STERLING. Let me ask you another question, if I may. You would not favor the amendment to this section either, would you?

Mr. KUHN. I objected to this section of the bill. I first came to Mr. Ames and said I thought section 66 ought to be stricken from the bill; that assessment companies ought to be allowed to do business. He said he did not agree with me, and after talking the ground over one way and another I said finally, "All right. If you do not want to allow them to do business hereafter, that is, new ones, at least allow those that are already in existence to continue business." That is the amendment that I have offered, and which I agreed to, which means that no more such companies shall enter the District than those that are already entered here.

Mr. LITTLEFIELD. That provision rather contains an indication that the business is not advisable?

Mr. KUHN. Yes. That is a slap at the business.

Mr. LITTLEFIELD. If it is feasible and wise, there is no reason why new ones should not come in as well as that old ones should continue?

Mr. KUHN. Yes, that is my suggestion. Why should it be stricken out?

Mr. PARKER. Ought it to be stricken out unless there is some restriction in the method of business?

Mr. KUHN. I should say they should be restricted and placed in the hands of the insurance department.

Mr. PARKER. That is a one-man power.

Mr. KUHN. No; a provision of law should be drawn to cover that.

Mr. PARKER. Have you ever thought up a provision that would make the thing safe?

Mr. KUHN. The statute books of the country have laws on that of one kind and another.

Mr. PARKER. I should say frankly that merely the provision that they have met their losses in the past year would not necessarily

imply that they would be safe if they ran over many years. There must be some provision to make them safe with guarantees of reserve.

Mr. LITTLEFIELD. Does your policy contain any guarantee in relation to this reserve?

Mr. KUHS. Nothing but that the reserve shall be used after the death rate shall have reached a certain point.

Mr. LITTLEFIELD. There is no stipulation as to the amount of reserve?

Mr. KUHS. No, sir; it is whatever the interest on these profits from lapses shall produce.

Mr. LITTLEFIELD. Do the policies stipulate that these lapses shall go to this fund?

Mr. KUHS. Yes; the contract provides that they shall go into that fund.

Mr. LITTLEFIELD. Then in a sense they do stipulate for a reserve?

Mr. KUHS. A reserve, but not a fixed reserve.

Mr. LITTLEFIELD. Yes.

Mr. PARKER. Have you a policy here?

Mr. KUHS. I have not, but I will get one and turn it over to the committee, if they so desire.

I started in to say a while ago, that where this particular section started in the different States, we defeated the measure in Missouri at that time, and two years later, when the Missouri legislature met, it was there again, and we defeated it the second time in Missouri; and it has appeared three times in the State of New York. It has appeared in a modified form in the State of Ohio, and we have had from time to time modifications of it in various forms.

Mr. LITTLEFIELD. Does the new Armstrong legislation in anyway affect the assessment business in New York?

Mr. KUHS. This amendment, here, is the Armstrong amendment.

Mr. LITTLEFIELD. As much as is suggested here in the bill?

Mr. KUHS. Yes, sir.

Mr. LITTLEFIELD. So that the New York legislation simply recognizes existing companies and practically forbids the formation of new ones of that kind?

Mr. KUHS. Yes; and it provides that if they want to they can change over to the other system of insurance. That is contained in this measure. So far as my own company is concerned, they do not want to change to another system of insurance. But I believe if you are going to drive out of business some fifty odd companies and annihilate them—I do not think that is the right thing to do—you ought to make some other provision for letting them give their assurance on some other plan. You could leave some avenue open to them, instead of wiping them off the map. This provision gives them the privilege of continuing on their present plan or taking up another plan.

Mr. PARKER. Where is the Armstrong provision in this bill?

Mr. KUHS. I can not cite just the section.

Mr. STERLING. I understand it is not in the bill, but in an amendment that has been prepared.

Mr. LITTLEFIELD. I understood him to say this amendment was substantially the Armstrong provision.

Mr. KUHS. That is what I said.

Mr. STERLING. The amendment takes the place of section 56.

Mr. KUHNS. It is getting pretty close to 12 o'clock now——

Mr. PARKER. Go ahead.

Mr. KUHNS. I have here a list of the classes of men who would be affected if this became a law: Expressmen's Mutual Benefit Association, the Insurance Clerks' Mutual Aid Association, the Telegraphers' Mutual Benefit Association, Workingmen's Cooperative Association, American Temperance Life Association, Degree of Honor, Physicians' Mutual Aid Society, Protective Life Association, Tradesmen's Life Company, American Protective Society, Masonic Life Association of Buffalo, the Commercial Travelers' Association of Utica, and about 40 other like societies.

That is the class of business that you would drive out if this went into effect. I wish to leave this with the committee.

Mr. PARKER. Very well.

[Memoranda filed by Mr. Kuhns.]

Section 56 of H. R. 18804, as it now stands if enacted into law by the various States, would needlessly work untold hardship on hundreds of thousands of citizens of this country by driving some fifty-odd associations and societies in which they have their insurance to the wall. Large numbers of the membership of these societies are advanced in years to an age where they can not get insurance in other companies at any price.

Something like 4,500,000 people carry assessment insurance of one sort or another, amounting to between nine and ten billions of insurance, or about one-half of all the life insurance carried in the United States.

The law for the management and control of these societies should give the widest authority to the superintendent of insurance, and whenever there is mismanagement or dishonesty, or even approaching insolvency, he should have full power to wind up the affairs of the company, or to bar from this District, if an outside concern.

Insurance in assessment associations is costing the members something like \$10 per thousand. It is well known that the rates charged by the level premium companies are such that thousands of men who have the protection of the mutual companies can not afford to carry old-line insurance, and if they are debarred from the benefit societies by adverse legislation they will simply be left without protection for their families.

To show the class of men that would be affected the following associations are cited.

Benefit societies that are sought to be driven from the field.—The Expressmen's Mutual Benefit Association, the Insurance Clerks' Mutual Aid Association, Telegraphers' Mutual Benefit Association, Workingmen's Cooperative Association, American Temperance Life Association, Degree of Honor, Physicians' Mutual Aid Society, Protective Life Association, Tradesmen's Life Company, American Protective Society, Masonic Life Association of Buffalo, Commercial Travelers' Association of Utica, and about forty other like societies.

If it is desirable to cut off the formation of this class of insurance company, instead of putting into the hands of receivers the interests of hundreds of thousands of citizens, the better plan would be to provide, as they did in New York, that those companies now doing business in the District or State may continue on their present plan, or a changed plan, but that no more shall be organized and no more admitted to the District or State. With this end in view I respectfully ask that the following amendment be adopted:

Amend H. R. 18804, Fifty-ninth Congress, by adding to section 56 of said proposed bill the following:

"Except those companies or associations now authorized to do business in said District and which shall have and maintain a reserve fund on their assessment policies or certificates equal to the net value of such policies or certificates valued as one-year term policies as provided in section 10 hereof, and *Provided further*, That any existing domestic assessment company or association may, with the written consent of said Commissioner of Insurance and upon a majority vote of its trustees or directors, amend its articles of incorporation and by-laws to conform with this act, and upon so doing and, upon procuring the official certificate of said Insurance Commissioner to transact the business

of insurance within the District of Columbia under such amended charter, the said corporation shall be deemed, so far as it may be, to have been incorporated under this act, and shall incur the obligations and enjoy the benefits hereof the same as though originally thus incorporated, and such corporation under its charter, as thus amended, shall be a continuation of such original corporation, and the officers thereof shall serve through their respective terms as provided in the original charter, but their successors shall be elected and serve as in such amendment provided: *Provided, however,* That such amendment or reincorporation shall not affect existing suits, rights, or contracts."

Just one word about the forms of reports that were talked upon yesterday. Some objection was made here to the publicity, and it was urged that they called for too much. There is one item called for in Mr. Ames's bill that I would like very much to see in there, and that is a provision calling for a list of all contested claims, giving the man's name, the amount of insurance carried, why the contest was made, and why it was not paid in full. That is a form I would like to see put out all over the country. It is, I believe, a very good thing.

There is another amendment on page 48, section 55:

That on and after the first day of January, nineteen hundred and seven, all policies of insurance, other than industrial policies, issued or delivered within this District, by any life insurance corporation doing business within this District, shall be in the forms hereby prescribed and not otherwise save as herein-after provided.

Mr. AMES. There is an amendment there, in line 20, after "in" insert "domestic."

Mr. KUHNS. What I wanted to say about that was—

Mr. LITTLEFIELD. You could not comply with that?

Mr. KUHNS. No, we could not comply with that. We have no overpayments. The old-line companies have overpayments and must return them. We could not comply with that, and I want to include also in that exception certificates on policies or certificates of membership of assessment associations. Amend section 55 by inserting in the twenty-first line, before the comma following the word "policies," the following: "and policies or certificates of membership of assessment associations."

Section 55 provides for a uniform policy in which forms are set out regulating the payment of premiums, the payment of dividends, loans upon policies, and modes of settlement. Assessment companies do not have premiums, do not pay dividends, and make no loans upon their policies. In fact, there is very little in this section that would be applicable to them from the nature of their business. Instead of premiums that are fixed and paid in advance, they make assessments after the losses have occurred, and the amount varies from time to time according to the needs of the company. Collecting the money for the payment of losses after the deaths have occurred, they know exactly what to collect, and there are no overpayments; hence no portion of the collections to be returned under the guise of a dividend. There are no overpayments or values from which to purchase paid-up insurance or extended insurance. There being no cash values to the certificates of membership, there is no loan value to them. It is for these reasons that the above amendment is asked.

Now, that is all of the Ames bill. There have been introduced here several other bills to regulate home industrial companies, and they include such companies as my own. One of those is H. R. 18894. I would like to have it amended so as not to include my company.

Mr. PARKER. That is amended by H. R. 19154.

Mr. LITTLEFIELD. That is drawn with the idea of regulating home industrial companies?

Mr. KUHN. Yes, sir. These companies here doing an industrial business—sick-benefit business, and so forth, and by this language it includes such companies as my own.

Mr. LITTLEFIELD. How does it embarrass you if you are not doing that business?

Mr. KUHN. It says that all companies doing business in the District shall have a certain form of policy, and shall deposit in this District \$100,000. The law of Iowa requires that we must deposit all our money in Iowa. We can not deposit in Iowa and here, too.

Mr. LITTLEFIELD. Do you make your deposits in Iowa in any public depository?

Mr. KUHN. It is with the auditor of the State.

Mr. LITTLEFIELD. Is that in accordance with the statute of the State?

Mr. KUHN. Yes; the statute of our State first prescribes the manner in which you may invest your money, in certain securities, and no other. After the securities are obtained you must deposit them with the State of Iowa, to be held for the company and for the benefit of the policy holders. We have some \$7,000,000 deposited in that way.

Mr. LITTLEFIELD. The law does not require you to carry a reserve, but if you do carry it, it must be carried in this way, so that the State depository of the company becomes the trustee of the policy holders?

Mr. KUHN. Yes. The funds are in the hands of the auditor of the State. That has been tried, and it has been held that the funds there are for the benefit of the policy holders. I have added an amendment here for H. R. 18894.

Amend H. R. 18894, page 11 of the printed bill, by adding after the word "corporation," before the period, in line 15, the following:

Provided, however, That no deposit as herein provided need be made by any company or association which has pursuant to the law deposited with the insurance department of the State in which it is organized, securities accepted by such department to the amount of one million dollars or more. Nor shall any company or association having such deposit be required to use the policy forms herein contained.

As I said, the reason for asking this amendment is that the law of the State of Iowa, also Indiana, requires that the trust funds of a life insurance company be invested in certain prescribed securities, and these securities deposited with the insurance department. This provision, of course, applies to the companies organized in those States. Manifestly, if the companies are required to deposit there, they could not deposit the same funds here, and without the above-suggested amendment, or one similar to it, the companies would be barred from doing business in this District.

I can make it \$100,000,000 if you want it.

Mr. STERLING. There is a substitute for that?

Mr. KUHN. Yes.

Mr. LITTLEFIELD. Is not your proviso a somewhat unscientific proposition? It seems to be merely arbitrary. It provides for \$1,000,000 or more, regardless of the amount of funds.

Mr. KUHNS. It provides—

That no deposit as herein provided need be made by any company or association which has pursuant to law deposited with the insurance department of the State in which it is organized certain securities accepted by such department to the amount of \$1,000,000 and more. Nor shall any company or association having such deposit be required to use the policy forms herein contained.

Mr. J. W. CAVE. House bill 19154 amends H. R. 18894, which eliminates that form of policies. H. R. 19154 gives the superintendent of insurance full authority to regulate that.

Mr. KUHNS. It would shut us out of the District as effectively as the other would do.

Mr. FOSTER. Why should there not be a deposit in the District?

Mr. KUHNS. A depository in any other State would be just as good.

Mr. FOSTER. Still a policy holder can only get it from that State?

Mr. KUHNS. No; we are doing business here, and you can reach it in the District. I think you have a right to bring us into court here, although our deposit is in the State of Iowa.

Mr. FOSTER. You can not be reached here.

Mr. KUHNS. That deposit is for the benefit of all the policy holders, and a policy holder living here would have as much right to it as a policy holder in Iowa or Indiana.

Mr. LITTLEFIELD. The court of Iowa would put it in the hands of a receiver?

Mr. KUHNS. Yes; the laws of Ohio and the laws of Iowa and Indiana require that the trust funds of a life-insurance company shall be invested in certain prescribed securities and the securities deposited with the insurance department of their own States. We might say that if the New York Life Insurance Company wants to do business here it must make a deposit of \$100,000 here. The Commissioner thinks they ought to deposit the funds. I think it is right that they should.

Mr. FOSTER. Ought not some security be given to the policy holders of a State by which they can be enabled to reach it?

Mr. KUHNS. No; if anything went wrong with the company it would be placed in the hands of a receiver for the benefit of all the policy holders. We have \$100,000 deposited in the State of Missouri, simply to cover legal expenses, or something of that kind.

Mr. BIRDSALL. The statute in Iowa authorizes the auditor to proceed at once to wind up the company and pay off.

Mr. FOSTER. That would require a man to go to Iowa in order to protect his interests in some form or other unless he wants to rely simply upon the efforts of the auditor of the State of Iowa?

Mr. PARKER. Mr. Kuhns, is there anything else you would like to say?

Mr. KUHNS. No, sir; I thank you very much.

Thereupon, at 12 o'clock noon, a recess was taken until 2 o'clock p. m.

AFTER RECESS.

Mr. AMES. I would like to call upon Mr. W. J. Graham, of the Actuarial Society, of Minneapolis, Minn.

STATEMENT OF MR. W. J. GRAHAM, OF MINNEAPOLIS, MINN.

Mr. GRAHAM. Mr. Chairman and gentlemen of the committee, I might say, in the beginning, that I have very heartily sympathized with the committee in the number of technical terms and technical words and phrases which they have had brought before them in these hearings—the preliminary term, the select endowment, the select and ultimate method, and all those things. I think that the different matters that have been brought before the committee here, of the needs of the young companies, and the proposed valuations in the Ames bill, about the terms, about the expense restrictions, etc., all follow from a few very simple principles.

To come to the first principles, the life-insurance business is a peculiar business, inasmuch as one must obtain the business at the start with the prospective idea of making it pay its way, to become a profitable stock company, to become profitable to the mutual policy holders, by the loadings that are on this business. The loadings are that portion of the premium above the net.

Mr. PARKER. We know that. We have been over that so much that we know it.

Mr. GRAHAM. I want to establish first, the term idea is in the Ames bill there. The Ames bill as it stands with this term idea provides the means whereby a young company can have the means of establishing itself and of providing for its business and operating under modern laws. The fact that so few companies have started within recent years is due, I think, to legal reserve restrictions which force a large legal reserve to be put upon the business which the business itself was not capable of sustaining.

Now, the situation has materially changed with the advent of the annual accounting, for which Mr. Ashbrook contended. There comes an absolute accounting of the company funds there, and it becomes impossible for those operating to go on under the methods heretofore followed by which the companies have previously put up the reserves for the first few years on their policies. The huge expense for the first few years which has characterized the practice in the past is also restricted there, and becomes impossible with the method of annual accounting.

With the annual accounting, therefore, it becomes necessary to make some change in the valuation laws, or to adopt some valuation law by which the company will have the means to proceed and to keep comparatively within the loading upon each year's business, or still within all the margins that it has for its business. I will not enlarge on that point.

I was going to speak, too, briefly upon the assessment business. There seems to be some dispute about the assessment provisions in the bill. Of course, the assessment companies differ from the old-line companies inasmuch as they can neither increase the business nor increase the insurance. The absence of assessments for the payment of death claims necessitates the putting up of an old-line

reserve. The history of the assessment business has been such that it has been thought wise in many quarters to restrict the business in so far as the incorporation of new companies is concerned. The Ames bill provides that those companies now existing can reincorporate, and it provides means by which they are to accomplish this end.

Mr. AMES. The amendment to the bill provides for that.

Mr. GRAHAM. No; in section 10 it is provided that companies can be reincorporated. I think that is a tremendously important provision in the bill, and I think myself that that provision is going to solve a large amount of the assessment problem. I think that the assessment business has been, to say the least, a very uncertain business, and at this time it looks as if there would be an increase in rates—an inevitable increase of rates—among the largest and hitherto most favorably held assessment companies or fraternal institutions working upon the assessment idea.

Without discussing the wisdom of reincorporating more assessment companies, we come to the fact that it looks as if the assessment business has within itself the inherent germs of danger, and as it has been conducted it has been unscientific, and it has been unprofitable, and the restrictions upon the formation of future assessment companies would seem to be in large part wise. Provision 10 of the Ames bill provides how these companies can reincorporate as old-line life insurance companies, and provides a way by which the assessment business can still be taken care of.

There are just one or two things I would like to say about the other features of the bill. I think the Ames bill as it stands can naturally be much improved. I think it is a throwing together of ideas. It is an evolution, and as such it is susceptible to radical improvement; but it is a basis upon which to work.

The four or five big things contended for there, included in the bill, are the publicity, and the loss and gain, and the accounting, and the standard forms; and then, too, that germ of Federal supervision—that portion of it that has been held to be the solution of some of the evils that have arisen or seem to have arisen under State supervision.

I call attention particularly to the voting supervision in the Ames bill. It seems to me there ought to be a method by which the policy holders of a life insurance company can organize and control the election of directors when occasion arises, not but that the agents will have their influence on the policy holders as they always have had, and always will, and not that the companies should have been better organized, but because it provides a means by which the actual control can be gained or an organization formed for the policy holders to follow out if necessity arises, if they take the actual control into their hands. And it seems to me it eliminates one great objection that has been held against this proposition, and that is the publication of policy holders' lists.

It has been very ably contended that such a publication lets down the bars to what is known in the business as "twisting," by which the rival agents of other companies get hold of lists of policy holders and try to get away the business of those companies. Then there is the publishing of a man's private affairs, a publishing of his insurance against his wishes.

In the matter or on the subject of the restrictions that appear in the bill, I think there are several restrictions in there that might be subject to modifications, such as the time when the first annual accounting should be made, and such as the restrictions on the contingency reserve. With an absolute system of annual accounting, by which the funds of the company are all accounted for, the necessity of a contingency reserve at once arises, to prevent unusual circumstances, panic, or financial depression, or anything of that sort from rendering a company insolvent, because all its funds are absolutely accounted for, and when accounted for become liabilities to the extent to which the different divisions are made.

It seems to me, upon reflection, that I think possibly I may have had a part in writing the first restrictive clause that was ever contemplated for legal enactment here about six months ago. On further reflection it seems to me that the idea of annual accounting, by which a company must account for its funds, largely solves a great many of the necessities of the situation, and I think with the annual accounting, in the rivalry that follows, it would be possible to very moderately limit the reserve, or to remove that limit altogether. In fact, I think that there is a danger in the accounting system by which every company must make a statement where it stands to its policy holders. I think with that absolutely legal demand the danger will be rather the other way—that the companies will be rather inclined to give too much—and that is legislating in an entirely new direction.

Then, as far as standard forms of policy are concerned, a number of comments have been made on that. As the Ames bill is amended, or as it is contemplated to be amended, it provides that the company can practically issue any policy that is free from ambiguity in the discretion of an insurance commissioner. I do not think there could be any possible objection to that, and I do not think a substitute clause to that would have any influence whatever in changing the present Ames bill. In fact, I think such a clause could be substituted for the standard policy section, greatly reducing the size of the bill without changing the intent or purport of the bill in any way.

Now, I will not take up your time, gentlemen, any more than to say that, after watching the course of the debate here, the criticisms that have been offered, a great many of them have impressed me in a great many ways, but they seem all to come down to the fact that the working out of this measure—the working out of the measures proposed in the Ames bill—should be very carefully done, and the restrictions should be very carefully considered. But the big facts of the bill stand out. It is a step toward uniform legislation. It is a step toward putting out a model that will be copied by other States, and that will prevent this confusion through reporting to a plural number of States and operating under radically different measures.

Mr. PARKER. Are you a company actuary?

Mr. GRAHAM. Yes, sir; I am.

Mr. PARKER. What rate of interest can you make your investment average, all through and in all?

Mr. GRAHAM. I should say a fraction over 4 per cent would be a fair answer. The average is very different in different companies.

Mr. PARKER. It would not perhaps be very different if it included all unproductive property as well as productive. You say your average is 4 per cent on all?

Mr. GRAHAM. Yes, sir.

Mr. PARKER. How much do you think it would be safe to allow at the present time for calculations for reserve, after taking out a reasonable amount toward expenses? Is $3\frac{1}{2}$ too high or not?

Mr. GRAHAM. I think $3\frac{1}{2}$ is very reasonable and conservative. I think 4 is safe.

Mr. PARKER. Do not some companies use 3?

Mr. GRAHAM. Yes, sir; they do.

Mr. PARKER. Which ones? Several?

Mr. GRAHAM. Yes; several of the largest ones use 3.

Mr. PARKER. Which ones? The most conservative old line ones?

Mr. GRAHAM. Yes; you might use that term; the old conservative, or you might say the wealthiest; the ones with the largest amount of assets.

Mr. PARKER. The "Big Three" of New York?

Mr. GRAHAM. Yes, sir.

Mr. PARKER. How about the Connecticut and New Jersey and Massachusetts Mutual?

Mr. GRAHAM. They use $3\frac{1}{2}$, largely. There comes to be a question as to the size of the reserve, and with a mutual company the tying up of money is intimately concerned with the question of the interest rates you use on the reserve. There may possibly arise a question in the future, when you may think the interest rate should not be lowered beyond a certain point. For instance, at the present time, for illustration, it would be absurd for any of these companies to go to a 2 per cent basis, to tie up reserves on a vast amount of money.

Mr. PARKER. I am only speaking of safety; not as to policy.

Mr. ASHBROOK. I think the Armstrong bill forbids a lower rate than 3 per cent.

Mr. PARKER. This present bill allows any lower rate that can be selected. What company are you for?

Mr. GRAHAM. I am with the Northwestern National Life just now, but I have been associated largely with the gentlemen who considered these measures.

Mr. PARKER. That is not the great Northwestern Mutual?

Mr. GRAHAM. No, sir.

Mr. PARKER. Is there a representative of that company here?

Mr. GRAHAM. No, sir. I merely wanted to say, from my observation, that I think the bill has got in it the elements for making a great law and doing a wonderful work. In the criticisms that have been made, so far as I can see or recognize myself as being—

Mr. PARKER. We will have to determine upon that—those general questions. Are there any special matters that you wish to speak of?

Mr. GRAHAM. No, sir.

Mr. PARKER. Then we are very much obliged to you.

Mr. AMES. I would like the committee to hear from Commissioner O'Brien, of Minnesota.

ADDITIONAL STATEMENT OF MR. THOMAS D. O'BRIEN, STATE INSURANCE COMMISSIONER OF MINNESOTA.

Mr. O'BRIEN. Mr. Chairman and gentlemen, there have been so many misconceptions in regard to this bill, and so many strange statements made concerning its scope and effect, and as to the motives underlying the persons who framed it, that I consider it a great

privilege to take up your time again for a few moments for the purpose of putting some matters on the record here; and if in doing so I am guilty of the bad taste of referring to myself occasionally I hope the committee will fully realize that I do it only because I think this matter should be fully explained.

Early in the year the Ames bill was prepared by Mr. Ames. When the committee met in Chicago the Armstrong bill was not reported. Everything was delayed until that date. When the committee met again, on the 20th of March, the Armstrong bill was reported, and what I consider the chief features of the Armstrong bill were, according to their report, incorporated and added to the bill prepared by Mr. Ames. Since that time the report of the Armstrong committee has been amended, and the bills, as finally passed by the New York legislature, are considerable different from the form in which they appeared in the report.

It was always the idea that this bill should be amended to conform to the Armstrong bills as they finally passed the legislature of New York. To this has been added two or three sections, to which I will refer, which were original with myself.

I disagree totally with every person who has condemned in a sweeping manner the work of the Armstrong committee. It not only was a most thorough and exhaustive examination of the great companies controlling nearly one-fortieth of the wealth of this country, and an examination of questions that must affect the citizenship of this country for many generations to come, but in the formation of the bills and the presentation of them to the legislature of the State of New York that committee, to my mind—both the committee and its counsel—occupied a most patriotic attitude and performed a most patriotic part; and from day to day and from week to week the people of the United States watched for the time when a break would come in the work of reform which that committee was committed to, and it never came; and up to the time of the adjournment of the legislature my judgment is that that committee stood absolutely for what was right, and tried to do the best they could with regard to insurance. For my part the report of the Armstrong committee and the bills which were passed by the legislature of New York are similar to the pillar of cloud by day and the pillar of fire by night, and I do not think this committee can do any better than to study and analyze the Armstrong bills. And if any member of this committee supposes that there is any idea of lessening or depreciating their work or antagonizing those bills, I assure them it is not in the minds of those who got up the Ames bill.

On some matters that I will speak about I have not been able to agree, but I am not prepared to say that they are not right on every one of those propositions. The Armstrong committee developed a condition of things which was known to many people to exist before those disclosures came out. It developed the fact that the great evil in life insurance, so far as the large level premium life insurance companies were concerned, consisted of the deferred dividend plan. The premiums charged by life insurance companies are based upon the actuaries' tables, giving a statement as to what number of men will die each year out of a given number. To that is added an estimate of the expenses of the company, and an estimate of the amount

that the company will earn upon its securities. In a mutual company, if these calculations were exactly true, when the last insured died the last dollar of the company would be paid out.

That is the theory upon which it is based. But the tables very wisely make very large allowances upon all those points. The companies suffer, and I will state it generally, from 15 per cent up, of the mortality that they expect, and I am informed that the majority of actuaries consider that what is gained each year in the lack of mortality is a complete gain to the company—that is, if it is not added on every year it is a complete gain. The average company earns much more upon its security than the calculated interest requires. The average company might—it does not, but it might be conceived that it would not, spend its entire loading. Those savings belong to the policy holders, and should be paid to the policy holders, because, after all, it was the extra amount that was charged to avert contingencies.

Under the deferred-dividend system only the policy holder who survived the tontine period received any portion of those amounts. The policy holder who lapsed got nothing on account of the savings. He only got the surrender value. The policy holder who died only got the face of his policy, which was carried by the net premium; and I am within the truth, I think, when I say that only one policy holder out of three survived and kept his policy in force. I think not more than 38 or possibly 40 per cent of the policy holders both survived and maintained their policies in force to the end of the tontine period.

These policies carried by the deferred-dividend companies provided that the policy holder must accept such portion of the dividend as the company managers put into his hands and allotted to him, and that provision of those policies has been sustained by the courts of New York and the courts of the United States. The matter was further emphasized and fastened down by the enactment of section 56 of the New York code, which provided that no one could bring an action against a domestic insurance company to compel an accounting or ask for a receiver or interfere with the management of that company other than the attorney-general or the insurance commissioner, or the attorney-general on the written request of the insurance commissioner; so that there were in this country at that time corporations controlling over \$1,000,000,000, owned absolutely—possibly the Equitable might be considered something of a stock company—but owned absolutely, otherwise, by the policy holders who had contributed the money.

Other people had no interest in it except those policy holders, except in the holding of offices and in earning their salaries thereby; and not one of those policy holders could ask an accounting and bring that company into court, to know whether he was receiving his just dues. So that I say the beginning and end was the deferred-dividend system, which permitted the accumulation of this vast surplus for which they were not accountable. It led to extravagance in the company. It led to this mad race for business, and if the movement is successful in which the Armstrong committee has led the way, the absolute abolition of the deferred-dividend system, I think, would do the greatest possible good that can be done by one thing, and it will be done. I think it is one of the chief elements in this bill, and I think this bill should conform to the Armstrong bills in every respect.

It is claimed, with some show of force, that the company should not be compelled to distribute all of this surplus; that there should be a certain amount for contingency reserve allowed to be held by the company year after year. That may be true. Then in the case of fluctuations of securities it would be dangerous if a company were compelled to distribute all of what Major Ashbrook so well described as "change." That is true, but there are only three companies in the United States that would be affected in the slightest degree, or in my judgment would be effected in the present century by the percentages that are contained in the Ames bill or those contained in the Armstrong bills; and if a general proposition was made that every company should be allowed to retain 10 per cent of its liabilities as a contingency reserve, the evil that has been spoken of as an accumulation of large surplus funds in the hands of the large companies would not be reached. The New York Life to-day has only a thirteen and a fraction per cent reserve above its liabilities, so that the only way it can be reached is, first, by saving a certain percentage, which in the case of a small company would be entirely fair, and then fixing a lump sum beyond which it could not go, no matter how large the company might be.

Now, I claim that is not a dangerous or harsh proposition, because, gentlemen, it is true that a run, in the sense in which that term is used in regard to savings banks or other banks, is impossible in regard to a life insurance company. The commissioner of insurance might find a company technically insolvent; there might be danger of that, but so far as there being an actual run on an insurance company that is absolutely impossible. Still, in order that no possible harm could be done, a reasonable contingency reserve should be allowed, and that is provided for in this bill.

These large companies were engaged in participating in huge syndicates, not always with the intention of purchasing the securities which were syndicated, but speculating in the securities for the purpose of making what could be made out of them when placed upon the market—a transaction which, in my judgment, is illegal in itself. The investments of an insurance company should always be in the actual property, and its participation in a blind pool or syndicate, in which it does not know how much it will receive, or when the amount is paid over to it it is unable to tell whether it is the correct amount, is illegal in itself. As I had occasion to tell the directors of some of those companies, had those syndicates resulted in a loss, in my judgment each director would have been undoubtedly liable, because he had invested in securities in which the company had not participated, and such a participation was an ultra vires act.

Some of these large salaries in these companies went to the extent of \$150,000 per annum, and that extravagance in salaries continued all along down the line.

MR. TIRRELL. Are any of those insurance companies limited, as savings banks are limited, to certain lines of securities in which they can invest, while in others they are not permitted to invest?

MR. O'BRIEN. All of them are. The companies have insisted upon making a gain and loss exhibit. The gain and loss exhibit is a statement of how much they have gained upon this mortality that I have spoken of; how much they have gained on the rate the legal reserves were obtaining and the actual interest; how much they have

gained or lost on the loading, the sum approximated for expenses; and, as I say, it has been universally resisted by the Armstrong committee.

This Armstrong bill provides for annual reports in which the salary of every officer receiving more than \$5,000 a year shall be given; that the date of the purchase of their securities, the name of the person from whom they are purchased, and the character of the securities that they purchase shall be given. It is provided further that there shall be a statement of the gains and losses upon the various kinds of business, and in many other matters this is the report that is called for in the Armstrong bill. The annual report is luminous with information, and would produce the greatest publicity possible.

Now, it is true that at the present time every company reports in the manner in which the report is called for by the commissioners—the insurance commissioners of the State. It is true that the insurance commissioners have adopted a most excellent form of report; and, Mr. Chairman, may I stop the thread of my argument here to say that in my judgment—and I do not speak so much as an insurance commissioner, but as a man who has simply looked on for the last year and tried to find out the situation—in my judgment there is no class of supervising officers in the United States who have so well performed their duties as the insurance commissioners. I believe insurance supervision has been superior to railway supervision. I believe that insurance supervision has been superior to the supervision of banks. I know of nothing where the great police power of government has been executed that has been so well carried out as has been the work of the insurance commissioners of the State. And when I speak here, asking that there be cooperation between the Federal Government and the States, I am not belittling my office or that of other commissioners of insurance because of any failure of duty on the part of insurance commissioners of the States. They are a high-minded, intelligent, able class of men. Probably there is not one of them in the United States who is not a superior to myself, both in knowledge and ability, and I certainly have the highest respect for them.

I believe that this bill affords an opportunity for cooperation. I do not stand here for less supervision, even if it were upon a question of taxation, because as a matter of fact statistics show that when all the reports are taken together, these large companies have paid something less than 2 per cent on their entire gross income for taxes and departmental management—considerably less than 2 per cent, and I know of no other business that is carried on at so low a cost as that at which the insurance companies carry on their business.

Mr. PARKER. Per cent on premium, not on investment?

Mr. O'BRIEN. I am speaking of their gross tax.

I say that this annual report provided in the Ames bill is the greatest step toward publicity that can be imagined.

With those two things, with the abolition of the deferred dividend system, the compulsory annual accounting and distribution to the policy holders, and with this enlarged and additional annual report, we have not only publicity in its highest sense, but we have at the same time competition, and that is a matter that should by no means be lost sight of, because without competition publicity alone would

probably not be sufficient. This bill differs from the Ames bill in the method of computing the valuation of policies.

Mr. PARKER. This bill differs from what bill? Do you mean the Armstrong bill?

Mr. O'BRIEN. Yes. This Ames bill proposes the preliminary term system of valuation rather than a select and ultimate system. You heard Mr. Dawson upon that, and I can add nothing to what he said. He is the originator and author of the select and ultimate theory. He said that the modified preliminary term was a safe and sound method of valuation. I am willing to let it go upon his statement. He described it as a modified preliminary term, and I believe this bill should be modified so as to carry out that situation. I believe we ought to stop with a preliminary term at this time, because the preliminary term is conceded by Mr. Dawson himself to be a safe and proper provision. The select and ultimate method of computing has not yet been sufficiently tried so that we can know that it will be sufficient, and I believe that under the modified preliminary term, as it is called, small companies will have a better opportunity, both for organization and for success, than they otherwise would, and I heartily sympathize with the principle that a large number of small companies is better than a small number of large ones. Many of the evils that have afflicted the insurance business have come from that position.

Now, that is different, as I said, from the Armstrong bill. Another marked difference from the Armstrong bill comes from the limitation of expenses. The expenses hitherto have been absolutely and entirely extravagant. The limitations on expenses of the companies for acquiring new business, the management of the companies themselves—and of course I am speaking only of some companies—have been out of all reason, and whatever is necessary to stop that should be done. It is a new principle in legislation to attempt to regulate the cost of any article by saying how much the expenses shall be of the person who is engaged in producing that article, and I confess that I am not yet satisfied that a hard-and-fast rule, limiting the amount of money that all companies under all circumstances shall spend, is the proper way of reaching this evil.

We do not attempt to regulate railroad rates by providing a limitation of the expense which the railroad companies shall incur. We do not attempt to regulate any public-service corporation by doing that. The rate is fixed, and the company is left to work out the details of the management itself. I believe that with the annual accounting and compulsory distribution of assets and the increased publicity which is brought about through these annual reports the competition which will be introduced under these circumstances will compel every company to regulate its expenses and bring them to the lowest possible point, and I believe that it is safer at this time to legislate along well recognized lines. In other words, it is safer to take our position upon grounds as to which there can be no reasonable doubt than to go to the extreme length of actually limiting the expenses which any company shall incur at any one time.

This question has never come before a committee of this sort before. It has never come before a body of men of the dignity, intelligence, education, and research of this committee, so removed from the influence of any particular section of the country, from any political

influence or the influence of any insurance companies. If in your judgment you believe that this limitation upon the expenses of the companies can be perfected and worked out, in heaven's name put it on, because the expenses have been too great and too much, and no public officer would perform his duty who did not say that to you gentlemen who are considering this question.

The same conclusions apply exactly to the limitation of business, and I will not take up your time on that.

Mr. BIRDSALL. Under the policy of forced distribution annually of dividends, upon what basis would you value assets?

Mr. O'BRIEN. That would make no difference in values. That has no effect in the valuation of policies, because they only pay such dividends as they have, and the dividends are always above the reserve, whatever reserve they have.

The distribution of annual dividends, of course, is not at all a new and untried proposition. I think possibly a majority of the companies that are represented at this hearing have annual dividends; at least several of them, and those are the companies as to which no scandals, or the least scandals, have been developed. There are many absolutely honest insurance companies, officered by gentlemen, some of whom you heard here, who would no more deceive or by indirection take money of the policy holders than they would pick your pockets; and many of those gentlemen fall into the fallacy of thinking that, because that is true, legislation is not necessary, and all that is necessary is honesty.

Mr. TIRRELL. What is your ground for saying that a large number of small companies is better than a small number of large companies?

Mr. O'BRIEN. Because I do not believe that it is advantageous to the general welfare of the country that great colossal aggregations of wealth should be centered at any place.

Mr. STERLING. Have you ever thought of any plan by which that might be avoided and still secure entire safety to the companies?

Mr. O'BRIEN. No, sir; I have thought of the idea of compelling companies to distribute their investments. The New York Life Insurance Company has \$317,000,000 in bonds. It has \$25,000 in mortgages—

Mr. ASHBROOK. \$25,000,000?

Mr. O'BRIEN. Yes; \$25,000,000 in mortgages, and \$317,000,000 in bonds. I have officially criticised that policy. I believe that money should be invested throughout the States where the company is doing business. But if you attempt to say they must invest a certain portion of their reserve in each State, there again you come at once to the proposition that such a law might act disastrously upon some of those investments in some of the States. I have arrived at no solution of that subject, except that I believe it to be the duty of every one charged with responsibility in this matter to assist, along proper and reasonable lines, the small companies that are scattered throughout the United States.

This bill is new in its provisions regarding the insurance department of the District of Columbia. Let me make a confession at once, that I am not familiar with the details of legislation in this District, and when I came here I did not know the distinction between a Department under the direction of the Department of Labor and Commerce and under the Commissioners of the District of Columbia. I

do realize now, but I did not at that time, that one is a Federal officer and the other is a municipal officer of the District. Is that right?

Mr. PARKER. In a way. One is a Federal officer for the whole Union and the other is a Federal officer for the District of Columbia, although both are under the United States Congress.

Mr. O'BRIEN. Now, I can not express myself, and you do not care to hear me express myself, upon the work that the insurance commissioners throughout the United States have done and the admiration I have for those men; but I do not believe there is one amongst them who does not feel daily that he is utterly unable to perform the duties that are imposed upon him. To a conscientious man the work of supervising these companies is appalling. When you take into consideration the fact that the natural inclination we all have is to be courteous one to another, in the comity between the States, the difficulties are added to, and the object of this bill, as I said before, is simply to place the great Federal Government—which is as much my government as is the government of the State of Minnesota—place that at the disposal of the States, if they see fit to use it; and at the same time it would be an inspiration and of the greatest benefit to the insurance commissioner. If an insurance commissioner leaves his State to go out and examine a company of which he is doubtful, he is met at once with the cry that that examination is a perquisite of the insurance commissioner.

In some of the States it is a falsehood. I drew the insurance bill of my own State, and there is absolutely no perquisite to the insurance commissioner. The additional compensation he receives, aside from his necessary expenses, belongs to the treasury of the State, and goes into the treasury of the State; and his expenses can only be paid after they have gone into the treasury of the State and have been drawn out upon a proper voucher. But as I say, he is met with that statement. If he does not make an examination he is oppressed with the idea that he has not performed his full duty; and gentlemen, this whole system is one of the most important matters connected with the citizens of the United States. The companies require more supervision, and not less supervision; and the object of this supervision is to give an opportunity for just such a thing as that, and to build up a great central department here. Maybe it is not possible; the limitations of human nature may be such that it is not possible; but if it can be done it would be a great and holy work, and as I say, that is one of the leading original features in this bill, for which, if it is not a good provision, I myself must take the responsibility of having made the suggestion.

This bill follows the standard forms in its final provisions. The idea is that it will follow the standard forms proposed by New York, with the additional provision that the insurance commissioner may allow any other form.

I say it with the utmost deliberation, that this country is flooded with policies which are ambiguous, misleading, and dishonest; and I say without hesitation that the worst of that is not in the large level premium life insurance companies, nor in the companies that were subjected to the severe criticisms of the Armstrong committee. And as I said before, this country is also filled by insurance companies—such companies as are represented by the gentlemen who have appeared before you—whose conduct and treatment of their policy

holders must be edifying and gratifying to those who examine them. It was because of the fact that the first duty I had to perform in my official position was to force out of the management of a company officers who had betrayed their trust, a company that maintained and carried a mass of policies of the kind that I have spoken of—it was because of that and other experiences that months ago I believed and stated that standard forms of policies had practically come to be a necessity in this country. The overwhelming difficulty of the task drove me from my position, and I practically abandoned it; and it was revived, not by my suggestion, but it was brought out by the Armstrong committee, and embodied in the law of New York, and I believe earnestly that it is possible to have standard forms of policies.

These bills may not be right. There ought to be considerable leeway given. There ought to be new forms allowed. But it is not in my judgment an impossibility; and if standard forms of policies can not be introduced there is a growing necessity in this country now for some sort of restriction to be placed upon the kind of contracts that can be put out on the unsuspecting public.

Gentlemen, in this matter you are dealing and treating with absolutely the entire savings of many of the laboring people of this country, of men who receive only moderate daily wages, and who at the same time are trying to make provision for their wives and children—men unskilled, illiterate; and I will say that it would take Major Ashbrook or any of the actuaries that have come before this committee many, many hours to analyze and understand a vast number of the policies that are issued in this country by one company or another—not by their companies, but by many companies that are scattered throughout the United States. And you must remember that that unskilled and illiterate man has got to meet the adroit, alert, talkative insurance agent, who rolls up an immense mass of figures, and the result is that man takes out a policy believing it to be one kind of policy, and it no more resembles the contract he believed he was buying than I resemble Hercules. Whether this can be accomplished or not, I say there is an absolute growing necessity for it.

This bill contains an original proposition, original in its present form, with regard to the control by policy holders of the management of mutual companies. It is taken in part from the law of Massachusetts. It is taken in part from the by-laws of an Australian company that has been very excellently managed. It embodies the representative form of government which we find in fraternal insurance companies. It contains the feature of cumulative voting, which I think ought to be introduced, not only in all corporations, but into every portion of any government where there is a board of a certain number to be elected, and where I believe a minority ought to be represented; and I believe it furnishes the manner by which in a crisis the policy holders can take possession of a company and do what they please with it, just as the people of the United States can take possession of this Government and do what they please with it, electing whom they please and when they please. I do not believe in the divine right of any officer to remain in control of any other person's property.

This bill differs from the Armstrong bill in that it does not provide for publishing the lists of policy holders; and there, again, we are met

with a position that seems to me is of doubtful propriety. If in your judgment it is necessary to publish the lists of policy holders, to enable the owners of the property to compel the management of the company to publish lists of its policy holders, let them do it. There should be no limitation put upon these men to at least threaten the officers of those companies that, unless they do things properly, they are liable to be expelled.

But expert insurance men tell me that if lists are published rival men will "twist" the policies issued by other companies, as they call it, and get the policy holders to lapse in one company and take out insurance in another. They tell me, also, that it would disturb the confidential relations that exist between the policy holder and the company, and would make everybody's business public. I can not but admit the force of the objection, and I would not receive such lists myself unless they are absolutely a public document, because I would not want to be accused of selling the lists, or giving them out, or furnishing the names of policy holders. If they come into the department at all, they must come in as a public document.

I believe this bill provides the means by which policy holders in the case of a crisis can take possession of a company. But in the case of these large companies, it goes without saying that when there is no crisis the proceeding is altogether too cumbersome for them to resort to it, and therefore they never will.

Mr. STERLING. Now, as to that fear that competing companies would solicit the business away from policy holders, does not that apply to every other business?

Mr. O'BRIEN. Yes.

Mr. STERLING. Does it not apply to railroads? Can you not see who the shippers are on every railroad, and accordingly if all companies are bound to disclose their policy holders it is an equal chance? They have all got the same opportunities.

Mr. O'BRIEN. That is true.

Mr. BIRDSALL. But would you think of requiring a savings bank or any other bank to publish a list of its depositors?

Mr. O'BRIEN. No, sir; there would not be any necessity for it. Savings banks are organized not on the vote of depositors, but in some States they are a stock company, and in some cases the trustees are self-perpetuating. They have the power to elect when a director dies, and the depositors never vote. But I have been impressed with other arguments, and I can say this, as an illustration, that in the case of a company which is on the balance, hovering on the balance, between going down and being maintained—particularly if that is a company where certain legal attacks could be made upon it and courts could be driven to apply a harsh rule upon such a company—the publication of lists of policy holders would give an opportunity for the gathering together of policy holders to commence litigation that might destroy the company. That is not always advisable. Take, for example, a company that is reorganized from an assessment company, where no reserve has been accumulated on account of policy holders. The policy holders may have become old men, or they may not be in good health and can never get any other insurance; and if the company is saved their families will get the insurance at the time of their death, but if the company is destroyed they will get nothing, and the policy holders can not buy any new insurance.

In such cases it is very often highly desirable, in the exercise of a supervisory care, to protect a company, if it can be protected in that way, in my judgment.

Mr. BIRDSALL. If the object in that publication is to enable one policy holder to learn who the other policy holders are, why could not that object be attained by a provision that any policy holder would have the right to inspect the books of the company to ascertain who the policy holders were? Such a provision is made in many statutes with regard to corporations. They are required to keep a stock book open to the inspection of the public generally in many States, but in all States to the inspection of stockholders interested in the company.

Mr. STERLING. That is what they have been denying in the past.

Mr. BIRDSALL. If the sole object of the publicity is for the benefit of the policy holders, I do not see how that could not be obtained more easily in another way.

Mr. O'BRIEN. Whatever objection there would be to one method would also obtain as to the other, and one is just as effective as the other. I believe myself, my best judgment is, that the great reason for opposing it would be to prevent combinations among policy holders. I may be doing injustice to reputable companies in giving that as one of their reasons. I can only, of course, give what arguments have come to me in the course of time.

Gentlemen, I have given you the history of how this bill was proposed, and I will close simply by saying that it has been an inspiration for me to address this committee. It has been an epoch in my life. We did not believe that we were presenting a perfect bill. In my correspondence with reference to this bill I said it was imperfect. In the President's message transmitting it to you he said it would require amendment. We of course realize that, and the changes, of course, in the Armstrong bills necessitated that; but I desire to say you have before you a skeleton bill which at least suggests almost every question connected with this very important subject, and sooner or later you gentlemen would have to go over this bill item by item and line by line for the purpose of determining just what your action will be. I thank you.

Mr. PARKER. Is there a gentleman here from the Mutual Fire Insurance Company of Washington? I understood there was one here a few minutes ago. He said he had an objection to some clause—I am not sure what the clause was.

Mr. DRAKE. That was Mr. Boutler. He is not here now.

Mr. PARKER. Do you know what his objections are?

Mr. AMES. I think it was as to the size of the capital stock.

Mr. PARKER. Mr. Ashbrook has something to say, I believe, on the subject of contingencies and reserves, in addition to what he said the other day.

STATEMENT OF MR. FRANK T. EVANS, OF WASHINGTON, D. C.

Mr. EVANS. Mr. Chairman and gentlemen, I trust that I shall not tax your patience beyond the limit, after hearing so much in connection with this subject. At the same time there are certain points of extreme vital interest not only to gentlemen representing the assessment, sick, and accident insurance companies of the District, but

some thirty thousand or more policy holders, members of those companies. I will not endeavor to touch upon the points that have already been treated exhaustively, but try to throw some light, if possible, where heretofore I have heard no explanation that seemed to be a proper and thorough exposé of the situation.

Mr. PARKER. What part of the bill do you speak to?

Mr. EVANS. I am now going to treat on the application of the Ames bill—the bill introduced in the House—the last bill by Mr. Smith, and the subsequent bill introduced by Mr. McGuire, both of those bills relating exclusively to our class of insurance.

Mr. PARKER. May I ask whether the Ames bill, which says that the present companies may remain and others may not, will be satisfactory to you?

Mr. EVANS. Do you mean the amendment of clause 56?

Mr. PARKER. Yes.

Mr. EVANS. I might say that I would have to couple that with another condition; but if you will allow me, I would like to be permitted to answer that later.

I want to say, gentlemen, that the first thing that I would like to speak to, is that there is great apparent misapprehension relating to this particular class of insurance. In the first place this class of insurance is a unique class, and is practically unknown excepting in the District of Columbia and several contiguous States. You have heard several gentlemen speak of assessment insurance. I might say, gentlemen, that there are as many kinds of assessment insurance as there are apples. They are all apples, but many different kinds; some are good and some are not so good.

Now, the great misapprehension that has existed has been caused by general misapprehension in regard to assessment companies, that they must necessarily be weak, unsound, or in some way liable to go into future bankruptcy. I think, gentlemen, if you understood the conditions that existed in the District of Columbia for some twenty-five years, you would agree with me that that condition can never exist under the present régime of doing business. The great trouble has been that assessment insurance, or natural premium insurance, has usually been founded upon what was estimated to be the present mortality, coupled with a sufficient loading for expenses, with practically no provision being made for the natural increase in the mortality from the company getting and acquiring old members. Now, of course, that is a natural result, if you are only going to charge the present mortality with sufficient loading of expense. If on the other hand you adopt a safe and sound rate of assessment, a rate that not only secures the company under present conditions, but will guarantee you against ever having, under ordinary conditions at least, to make an additional assessment, then, gentlemen, you have something that should be just as good as level premium insurance.

Mr. TIRRELL. That is one trouble, that none of them have ever gotten to that point.

Mr. EVANS. You will pardon me, but this is the only class of insurance that has demonstrated for twenty-five years—and that is sufficient time—that it is absolutely on that basis. In other words, through the wisdom of the persons who first inaugurated this class of insurance they adopted an assessment rate that has proven thoroughly adequate, so much so that it has never been changed.

That additional assessment has never been changed, so that every company without any legislation to guide it, excepting the general incorporation laws—and I say this advisedly—every company conducted on honest principles has succeeded.

Mr. STERLING. For how many years?

Mr. EVANS. It began, as near as I can remember, about twenty-five years ago. In Maryland they have been conducting that class of business beyond the time we have here. Since 1887, and before, we have had it here, and certainly we have demonstrated beyond any shadow of doubt that our basis is thoroughly sound.

Mr. PARKER. How do your rates compare to those of ordinary life insurance?

Mr. EVANS. You can not compare the rates, and I will tell you why. We are not ordinary rate companies—that is to say, ordinary life assessment companies. Of the entire disbursement for sick, accident, and death benefits, about 80 or 90 per cent are for sick and accident, maturing and being paid out during the lifetime of the member. The amount of the benefit paid as a death or final liability is comparatively small, very small; in fact, averaging according to the last statistics here in the District about \$50. The result of that is that the risks are so evenly distributed that there has been practically no increase in the mortality between the twenty-years-old company and the three, four, or five year old company.

Mr. PARKER. Have your companies mostly a limit on the amount of policies for death? What amount are they authorized to issue?

Mr. EVANS. There is a clause, which Mr. Davis yesterday treated of, that they should not issue policies in cases of one assessment, but without any other proviso the companies have built up by sound conservative business methods; in fact, they had almost a uniform policy for some years, and a uniform rate.

Mr. PARKER. What are your largest policies under that business ruling?

Mr. EVANS. I think that one company here has some policies as high as \$500. The majority of the companies issue nothing in excess of \$100.

Now, I am only giving you this preliminary talk to show you one phase of this situation that has not heretofore been presented—that is to say, that when you have heard the discussions concerning assessment insurance you can not apply the rules to our class of insurance. The second thing is that this is industrial, pure and simple. I wish to say one thing which I think in justice to the companies I might mention at this time, our worthy superintendent of insurance made in the course of his speech yesterday or the day before a statement that several companies in the city had refused to comply with certain regulations as to their annual report. I have to differ with the superintendent on that point in this way, that in the present code, if you gentlemen will read it—section 653—there is provided a manner of report which is so clear so far as it goes, and so specific, that there seems no question that it applies to us and to us alone.

We did not, when the department of insurance was first opened, object to filing with the superintendent a form of report similar to that required of the old-line companies. He did not ask us to comply with section 653. We had no objection to filing reports; anything on

earth that we were capable of getting he was welcome to. But coupled with that was a condition, and that condition was that we should pay upon our premium receipts $1\frac{1}{2}$ per cent as a tax. Now, the learned counsel employed by these companies did not think that we were under that clause of the law. However, in conference with the corporation counsel and the department, we said: "Gentlemen, the law says that this shall be paid upon the net premium receipts;" that is the language of the law, while our companies were classified as life and assessment, a different term, as you will observe by reading it.

However, we said the word "net" must be construed, and he agreed with us; and the corporation council presented a construction that if we were permitted to conduct after inquiry concerning cost of purchasing the insurance—the money never in fact coming into our hands in a practical manner, but what we call the ordinary—that is, the percentage allowed for the collection of money—we would pay the $1\frac{1}{2}$ per cent upon the remaining, without questioning the fact that we did not believe we were taxable at all. The first year, in fact, when he presented this, the department acquiesced, and we paid this tax, filed the report, and there were no questions asked. The next year we were requested to change that construction of the statute, and to pay upon our gross premium or assessment receipts. Now, there was a new proposition. We could not realize nor contemplate for the moment that the word "net" could mean gross. I find it, as defined in the Ames bill here, in this language: Net assets (page 2, line 4) means "the funds of the insurance company available for the payment of its obligations within the District of Columbia," and so on.

Mr. PARKER. That is not net premiums. Your taxes were on net premiums, but this is net assets—a different thing.

Mr. EVANS. I make only the construction of what constitutes "net" by the best actuaries of the country. They vary but comparatively little in their definition of what constitutes "net." We paid in 1903 the taxes upon our gross receipts under protest; not willingly, but under protest, in accordance with the wishes of the department, and we filed the reports just the same. In 1904, our counsel advised us that it was a wrongful, injurious, and burdensome feature to require that of our small companies, which earn very little, have very little territory in which to do business, and severe competition. We put the matter again before the department corporation council and before the commissioner, and they ruled against us, with the final result that we were forced to take judicial proceedings at the request of counsel, and that is still in course of determination.

Mr. PARKER. How many of these companies are there in the District?

Mr. EVANS. Fourteen local companies.

Mr. PARKER. How much capital do they run from?

Mr. EVANS. They run from one to five thousand dollars.

Mr. PARKER. How much is the largest amount of risk out in any one of those companies?

Mr. EVANS. I haven't at hand the report for the last year, but I should say \$250,000 to \$300,000 would cover the contingent liabilities on policies for any one company; running from \$25,000 up.

Mr. BIRDSALL. What is the percentage in your company?

Mr. EVANS. I would be glad to treat that later.

Now I want to tell you gentlemen why these companies are existing in the way they are. The law of 1887 permitted the promotion of this class of insurance with a paid-up capital of 10 per cent—that is, 10 per cent of its capital should be paid up, the same as the mechanical and other concerns. As a matter of fact it was not understood that any of the capital was to be paid up, and no attempt was made to so construe it until the act of 1902. Then the superintendent of insurance took up that matter and said: "Gentlemen, you must pay up in full your capital stock."

Now, I will mention just at that point, so you can have a clear idea of what the capital stock means, that those companies doing an industrial business among a class of poor laboring people, principally, principally people of whom I dare say there is not one in a thousand that could possibly undertake to conduct a company successfully, because, gentlemen, there never was an institution in the world more difficult to conduct than an industrial life insurance company. It requires more energy, more brains, and more experience of the right kind. The result was that they began business with a small capital stock for the purpose of preventing, when the business had grown to successful proportions, the control of the company getting into the hands of persons absolutely ignorant and incapable of managing it. Therefore the only requirements were that they should furnish capital enough in the beginning to successfully inaugurate and build up the institution until it was self-supporting.

Now, in accordance with the superintendent's suggestions, we paid up the nominal capital stock, which you gentlemen will realize was very important to preserve the equities of the incorporators, and keep them from being destroyed when it reached a successful point. In addition to that we had to furnish necessarily a surplus for working capital. It naturally follows that the three, four, or five thousand dollars, whatever the capital stock might be, could not be utilized, not being elastic, for anything in the purchase business, to pay claims or anything else, unless in case of insolvency, when it would possibly pay something. The result has been, gentlemen, that we have proven conclusively that our business is sound. We have proven conclusively that the plan is based upon a principle, beyond all question, a thoroughly sound principle.

Now we come to you with this statement that we are not here asking for mercy, for we do not feel that we have committed any crime. We do not come here asking for anything, gentlemen, but what is just.

Mr. PARKER. Have you a policy here that shows what the assessments are?

Mr. EVANS. I can tell you, but I have not.

Mr. PARKER. Say on \$100.

Mr. EVANS. I will tell you, Mr. Chairman, if you were under 40, and you wanted a policy giving you \$10 a week for say ten weeks in a year, and a hundred dollars at death, you would pay 40 cents a week, a weekly premium of that amount. The rate, if compared to the old-line rate, would be a peculiar comparison. If you compare it with what is known as the old-line industrial rate, it would still be wrong, because, as I said awhile ago, out of every

dollar we disburse, from eighty to ninety cents is paid in accident benefits; therefore it follows that not more than ten or fifteen or twenty per cent is ever paid for death benefits. Now the only possible reason that could exist ordinarily would be putting up of a reserve fund of any kind, assuming that my statement is correct—and certainly, gentlemen, I can prove beyond controversy, if the opportunity was given, that every word is correct—that our rates are not sufficiently adequate to continue to keep us in that state of prosperity which would enable us by the common sense rules that govern good business, to accumulate as we go along a surplus or guaranty fund that will in itself be sufficient to meet every exigency that might arise.

I could state the personal working of each individual company, and show you even from the reports that I have that they have always with commendable business sagacity done that thing; that as their liabilities have gone up they have increased because they had the means to do so; not that they had to do it from methods of necessity—in fact, if we keep on hand a surplus for immediate use sufficient to equal, or to meet, the assessments, the premium receipts, for two weeks, we would have enough to meet any ordinary situation that might prevail. Nevertheless we find a peculiar situation brewing. Now I will call attention to this. Here is a copy of a bill, an act, that in 1904 was approved by the insurance companies of the District, was approved by the department of insurance, the Commissioners of the District, and by your honorable body in the House. It was held up by Dr. Gallinger in the Senate because it contained no exemption clause for paternal insurance. Now, that bill simply provided that no new assessment life companies should be inaugurated in the District without keeping a paid-up capital of \$10,000; and the companies then existing under a prior act of Congress, giving them, of course, certain inalienable rights which could not be ignored or taken away, should pay up \$1,000 per annum in real estate or other securities to a trust fund to be controlled by the trustees. This we approved, not that we felt that it was necessary, but to cater to the desires of the department. The bill speaks for itself.

Now, when the morbid sentiment created by disclosures spread abroad it naturally struck Washington with, at the same time, an unfortunate conflict of opinion; and the issues involved between the department and the companies on the question of taxation seemed to accentuate the feeling, and the department began to insist that we would have to have a more drastic measure. Now, here is one thing that I want to call your particular attention to, and it has considerable bearing on this case, and that is that almost without exception there has been no demand, and I say it advisedly, from the public—that is to say, from the members of these companies—there has been absolutely not one failure of any concern since the department of insurance came into existence, nor for many years prior to that, unless it was a little wild-cat concern that was not worth mentioning.

Now, where does this clamor come from? The superintendent of insurance, gentlemen, would not stand here and tell you that there was a single one of these companies insolvent. He does not dare to tell you that they would fail to meet their obligations that would

come against them, that they have not been amply provided with funds to meet every single obligation that they have had to meet. Not for a moment will any man dare to controvert that, unless he wishes to convict himself of falsehood, because it is not so. As a matter of fact, you gentlemen can hardly conceive of the difficulty of conducting a sick benefit insurance company, because death is one thing and life is another.

MR. TIRRELL. Have you not been advised to raise your assessment rates from time to time?

MR. EVANS. No, sir; we never dreamed of it.

MR. TIRRELL. What is the name of your company?

MR. EVANS. I would hardly like to mention. I am representing some seven. I am president of the Washington Industrial Underwriters' Association and a medical director of my company. I would hardly like to mention.

MR. TIRRELL. You understand the system that was in operation with the Royal Arcanum, a company in which I paid assessments myself. You know their system. It was considered the best.

MR. EVANS. That was a paternal, based upon present death rates.

MR. TIRRELL. Your remarks were not applicable to that?

MR. EVANS. No; not at all.

Now, gentlemen, if we come to you with a full exposé of our business, not trying to cloud the issues, not trying to throw dust in your eyes, and could at once show you the actual workings of our business, you would say, "You are on a sound basis."

MR. AMES. What makes the operation of your company possible with such low premiums?

MR. EVANS. I did not say that the premiums are so low. I say that the premiums are thoroughly adequate, sufficiently so; but I will tell you one factor, and it is one that you gentlemen could not possibly arrive at unless I told you. The causes are manifold, between the shifting elements of our population—that may be one thing that causes the heavy lapses in our business and the changing. But I think it is primarily due to the fact that insurance is something that people are being educated up to. For instance, industrial insurance, such as existed many years ago, has become indispensable to the masses of the people that are too poor to obtain insurance in any other class. It is rather an unfortunate condition, because we have a sufficient premium to maintain, I believe, every member through the ordinary expectations of life safely.

MR. PARKER. I have here an advertisement that has been handed me of the Provident Relief Association. Is this one of your companies?

MR. EVANS. No, sir; that is represented by Henry E. Davis.

MR. PARKER. Are the rates about the same in all companies?

MR. EVANS. Practically.

MR. PARKER. I would like to read the rates: Ten cents a week between the ages of 15 and 40, giving a sick benefit, I suppose for ten weeks, of \$2.50, or a death benefit of \$25. The same sum between the ages of 40 and 50 gives a sick benefit of \$2 per week and a death benefit of \$60. The same sum between the ages of 51 and 60 gives a sick benefit of \$1.50 and \$15 at death. That seems to be the rate through the larger payments, which run up to 30 cents a week. Can you tell me how much of these collections go out in commission or to agents?

Mr. EVANS. There is no way, Mr. Chairman, so far as we have been able to determine without more expense perhaps than a small company could afford, to get that, because we can not afford to employ expert mathematicians and actuaries in determining just what percentage it costs us to get the business.

Mr. PARKER. What commission do you give on collections?

Mr. EVANS. From 15 to 20 per cent of the collections are allowed as commission, providing the collector is not paid a salary. Of course, that does not apply to the purchase of new business.

Mr. PARKER. What do you mean by the purchase of new business?

Mr. EVANS. Because, you see, we naturally not only have to make good the lapses of old business, but we have to purchase more than that to make the increase.

Mr. PARKER. What commissions do you allow?

Mr. EVANS. They vary very much.

Mr. PARKER. Well, about?

Mr. EVANS. I will give you a practical idea. If you were working for the Metropolitan Company, they would pay you seven times the amount of the small premium that you have obtained.

Mr. PARKER. That is not one of your companies?

Mr. EVANS. No; but I would like to give you an illustration.

Mr. PARKER. But as to your companies?

Mr. EVANS. We pay, if we are paying in advance in cash, about seven times the amount of the weekly premium.

Mr. AMES. You speak about the lapses being a source of income. What proportion are lapses?

Mr. EVANS. I did not say, Mr. Ames, that lapses were a source of income. On the contrary, they are a source of great loss. That is something that is generally misunderstood. The lapses would be a source of income if the lapses represented policies that had extended over a period of years—

Mr. AMES. I asked you so as to ascertain how it was possible for you to conduct your business with such low premiums, and I thought you gave an answer and one of the reasons the large lapses.

Mr. EVANS. I should have added to that that the result of the heavy lapses rate is that we never carry the percentage of old people that the old line companies got in the course of time by the process of evolution. Now, of course we will reach that point; in other words, if you write an increase in a year of 1,000 members, and in the course of another year you lose 800 of them, you naturally have only 200 remaining, and if in the course of another year you lose another hundred you only have 100 remaining. That is about the practical experience.

Mr. PARKER. What becomes of the profits of these companies?

Mr. EVANS. The question is a broad one. I will say this to you, that if there are profits earned by any individual companies that those profits are subject to disposition of stockholders to be paid as dividends and to be utilized as surplus funds. And, of course, to be utilized also in payment of salaries for the trustees and directors. I am sorry to say that the majority of them have very little for that purpose, some practically nothing at all; they do not have it.

There is one point more that I want to make at this time. You have heard me say that the capital stock of these concerns will run from

\$1,000 up. That does not, gentlemen, mean that there is not any more money put in that business—not at all. On the contrary, that is tied up; that can not be used for anything; but the working surplus must be put up in addition to that. In the case of the company that I am directly connected with, I might say that I think about \$15,000 additional has been paid in to the trustees besides the entire income, netting many thousands more, in our efforts to build up a worthy and successful institution. But of course therein lies a very important point that you might lose sight of, that while it seems small, it seems in fact too small, yet it does not represent anything but mere nominal control that must be represented in cash. If we had a capital stock, and that was paid up, we could not use the capital paid in; it would be tied up. Therefore we keep that as low as possible and apply our surplus fund to the handling of a successful institution.

Now, I will get down to details. This matter came before the subcommittee of the House, of which Mr. Smith is chairman. It is referred back to us with the request that a uniform policy should be adopted, and the bill brought back. In line with that request the companies of the city generally met, and, after considerable work, adopted what we believed to be one of the best policies now in operation. It is not the policy that we have used here for many years, but it is the policy used in the neighboring States of Maryland and Pennsylvania, and has been found successful and satisfactory both to the insurer and the insured. We concluded that that form of policy would be, as a definite thing, better than the policy that we had heretofore been carrying, and we took the policy and endeavored to liberalize it. We figured very carefully whether we could not, instead of giving \$5 a week and \$50 at death for a premium of 20 cents, give \$100; and it was decided that if we could get that form of policy, and legislation did not injure us, that we could do that. In other words, we are striving and have been for years, to liberalize our policy in every way. The main factor, I might say, has been competition. The older companies were forced to a great extent to increase their liberality, because newer companies were coming in and forcing them to do that, and I think that a very strong argument in favor of fair and reasonable competition. However, when one of the committee preparing the bill took the policy to the insurance department it was left there by request. We presumed, as a matter of courtesy, that it would be returned to us to determine what was fair. Instead of that we have been presented a substitute of Mr. Smith's original bill—we have here (H. R. 18894) as a substitute for the original bill.

Mr. PARKER. It is 19154. The newest one does not give any form.

Mr. EVANS. Pardon me, but this one that I refer to is 18894, introduced by Mr. Smith on May 2.

Mr. PARKER. But there has been a substitute to that introduced.

Mr. EVANS. I have not seen or heard of that.

Mr. STERLING. Mr. Smith introduced the substitute himself.

Mr. EVANS. Then am I to understand that it is understood that this being assessment insurance, and the policy industrial, that we are not to have the uniform policy?

Mr. PARKER. There is no proposition to give a uniform policy on this industrial policy.

Mr. EVANS. Of course, this was in view of the request of the company—

Mr. PARKER. I don't know what we are going to do, but I say that is the proposition. Mr. Smith introduced a new bill containing no form.

Mr. EVANS. I am sorry that I have not been able to learn of this before. Therefore, its provisions are not exactly clear to me; in fact, not at all. Might I inquire what the requirements are?

Mr. PARKER. Giving full authority to our commissioner of insurance—practically the same thing, with the \$10,000 deposit guaranty.

Mr. EVANS. Then I will say, gentlemen, that prior to the introduction of this bill on May 2, introducing what purports to be a policy approved by the department, I would not hesitate to agree to the commissioner of insurance joining with us on what would be a uniform policy. I am, frank to say that, unless his mind undergoes a great modification, there would be nothing but ruin staring the companies in the face in trying to introduce a form of policy similar to the one introduced on May 2. As a matter of fact, sick-benefit insurance intensifies a hundred fold the difficulties of handling insurance.

Mr. STERLING. The analytical examinations?

Mr. EVANS. It is not that. It is the fact that a person seldom dies willingly; and when he is dead, there is but one factor, and that is, Is he in good standing? But for the persons desiring sick benefits there is always a factor of graft. Now, we know that many people are honest—the majority are fortunately honest—but, unfortunately, many of them are grafters.

Mr. STERLING. That is, they play sick?

Mr. EVANS. They do, sir. For instance, I will give you a practical illustration of how one person can graft upon a paternal sick-benefit company. A gentleman walked into our office on one occasion and asked for the largest combination policy that we would issue on his wife. He gave his card as a manufacturing chemist in another city. He said that his wife was a peculiar person, did not like insurance, but that he was very fond of it, thought it was an elegant thing, and that she was in a certain company in another State, and he gave us a check for the premium. But it looked suspicious, and when he found that I was the medical examiner for the company, he requested me personally to go and call upon his wife as in the position of somebody seeking some other line of business. That in itself was suspicious. Now, I wrote to the other company immediately, and I will give you the result of that. [Reads:]

Replying to your inquiry, we have to say that her record with us would not justify us in recommending her to you. She became a member of this society in December, 1891, and has drawn the full limit of sick benefits allowed by the society. The following is a copy of her record: Two weeks, 1894, dysentery and grippe. One week, 1895, nervous exhaustion. Eight weeks, 1896, grippe and inflammation of the bowels. Four weeks, 1897, grippe. Five weeks, 1899, muscular rheumatism and grippe. One week, 1899, gastritis. One week, 1900, gastritis. One week, 1900, fainting attacks, palpitation, and weak heart. One week, 1900, cold and general debility. One week in 1902, influenza. Fourteen weeks, 1903, neurasthenia, nervous prostration, hysteria, epilepsy, and gastritis.

Now, gentlemen, that is only a sample, and it is to show you the necessity for a limitation being placed in the policy, not to protect us against honest people, but to protect us against grafters. It works

out in a practical way very nice so far as honest people are concerned, but certainly we must have protection or we would be ruined.

Now, having eliminated then the factor of policy form, I will say that I have no doubt we can work out a happy solution of that with the superintendent of insurance.

Now, the next point is as to the provision that \$10,000 shall be placed before the 31st of December next by the existing companies with the register of the supreme court of the District of Columbia. I will say that in the bill introduced by Mr. McGuire that we have all features, practically all, of the other bill. Leaving out the policy question which is in here—but we have those others also—and we have this one proviso. Now remember, gentlemen, that you are not injuring anything which is not yet born. Remember that a company that is not in existence can not very well be injured. Therefore we care not if you place \$1,000,000 as a minimum for a company that is not in existence.

Mr. STERLING. Would you rather prefer that that be done?

Mr. EVANS. You know we are all naturally selfish, but I am not so selfish as to stand here and favor a bill that, so far as my individual company is concerned, would not affect us, but will create serious injury to the youngest institutions. I have been approached, gentlemen, by the representatives of at least one company with virtually this remark: "Let us pass a bill that will shut out these little concerns, and we will have the field to ourselves to do business. We don't care anything about the young concerns. We want to catch them. We want insurance, whether legal or not, whether confiscatory in its character, whether it is a denial of their constitutional rights, or embodies the equities and principles of justice. But we will wipe them off the slate, because we want the field to ourselves." Now, I don't think you disagree with me when I say that that is not the correct public policy.

Mr. STERLING. Then it assails the principle upon which your insurance is based?

Mr. EVANS. Yes.

Mr. AMES. I want to ask you a question. How many weeks' premiums did you say it was necessary for you to pay for securing new business?

Mr. EVANS. I should say from three-quarters of a year up to a year's premiums. It is hard to estimate. But that does not represent the full cost seven or eight times. We may pay a man a salary, and it may represent \$25 or \$30.

Now, to get back to my point. You must remember, gentlemen, that a child on the start, be it ever so small, is just as much entitled to consideration, if not more so, than a full-grown individual, because the child is less able to protect itself against assault. Now, here is the situation: These companies are installed, they are doing an honest business, they have put up their capital for that purpose, and, while perhaps the amounts do not compare with the large sums of money handled by other companies, let me call your attention to the fact that they have a very small field in which to operate.

What are you legislating for, gentlemen? Simply for these unborn companies, and branches of other companies doing business here with their headquarters elsewhere? Now, we are the only people who have our money in the business. We have spent years of time, earnest

effort; we have done everything we could do to bring this business to the higher plane, and certainly we have done good along those lines. Some years back the secretary of the Associated Charities said to me: "I am satisfied that but for the assistance of your class of life insurance going to the poor people of this city our demands would be very much greater than they are."

Mr. TIRRELL. How many companies did you say there were?

Mr. EVANS. Fourteen.

Mr. TIRRELL. How many people are insured—the number?

Mr. EVANS. Approximately, I should say—well, perhaps 40,000.

Mr. PARKER. Can you tell as to any of these companies—take the group of them or any single one—and tell the whole amount of premiums received through the year, and total amount paid out for sick benefits and for death? What proportion?

Mr. EVANS. I would hardly like to mention names.

Mr. PARKER. I don't care for names. What proportion?

Mr. EVANS. The average is about 25 per cent.

Mr. PARKER. What do you mean by that?

Mr. EVANS. That is taking it all as a whole.

Mr. PARKER. You mean that if you take in \$100 you pay out \$25?

Mr. EVANS. That is about the average for the fair insurance companies here, and also about the average of the old line industrial companies. That is a very pertinent question and needs this explanation—that it does not follow that that 75 per cent represents the salary or the grafting, but it represents this fact, that the business is exceedingly expensive to procure and hold, and therefore is beyond our control to hold to that extent.

Mr. STERLING. Do you have an age limit?

Mr. EVANS. Yes, sir. It runs from 50 to 60 years in the various companies; some 50, some 55, and I think some 60.

Mr. STERLING. What is the minimum age?

Mr. EVANS. The minimum age is supposed to be about 1-year old children.

I want to earnestly ask you to consider this subject. In deference to the sentiment that seemed to prevail, not in our membership, but to the department, and perhaps through the spirit at large, we proposed this amendment, that the existing companies, those already incorporated, would sacrifice out of their earnings their surplus which they need really to conduct their business, the sum of 10 per cent of their gross premium receipts, each and every year, until the full sum of \$10,000 was deposited as a guarantee fund. I think you will recognize the equity of that proposition. If we set an arbitrary sum, say \$2,000 a year, the very young companies would certainly be burdened grievously. By paying this 10 per cent, if you gentlemen feel that you must have that, we feel that we can pull through successfully and satisfy that spirit which seems to be abroad.

In connection with this matter I want to call your attention to the fact that for some twenty-five years the State of Maryland has grasped this problem quite successfully. The law under the State of Maryland provides:

That weekly or monthly collection or industrial benefit societies of the State incorporated before the 1st of January, 1898, and which made a report to said insurance commissioner for the year 1897, may be only required to deposit with the insurance commissioner upon the terms above in this section mentioned, the

sum of \$500 before the 1st of January, 1893, and to deposit as aforesaid an additional sum of \$500 before the 1st day of January in every year thereafter, until they shall have each deposited, as aforesaid, the full sum of \$10,000.

I will say that the State of Pennsylvania, with millions of inhabitants and a vast domain there to do business in, only requires \$25,000 for new companies and the law was not retroactive.

Mr. BROSNAN. Did not the State of Maryland require those companies to go back ten years?

Mr. EVANS. No, sir; I think not.

Mr. BROSNAN. When was that law enacted?

Mr. EVANS. The law was finally enacted in 1904, as it now stands, but in the one originally enacted there was a typographical error in the construction which was subsequently rectified, and the companies were required to only pay up \$500 per annum under the construction of the typographical error.

Now the question resolves itself into this: First, do we observe a prescribed form; are we sound and solvent; have we done business honestly, and can we continue to do it honestly and live and meet every obligation, and prosper with proper regard for every safety that should be thrown around a policy holder. Can we do that without putting up a sum of money here which can not be touched? Under the rule we could not pay a death claim with it, absolutely nothing unless we have reached that final stage where we can not pay our claims, where judgments exist, and are taken out by process of law. We ask for that modification. We are willing to put up four times as much, if necessary. A company that is taking in a thousand dollars a month would have more than a year to deposit. A company having \$50,000 a year would pay \$5,000.

Mr. PARKER. Is there any company that takes in \$50,000 a year?

Mr. EVANS. Yes, sir; there is one that I think takes in more. Those companies have the advantage of age, and they have accumulated in the usual progress of business enough funds to do this, to comply with this \$10,000 provision without any trouble; and the result is that they came here through their attorney, Mr. Davis, and advocated the passage of this law, which they know full well would be injurious to the younger institutions and play into their hands, forcing the people to lose their present insurance. Gentlemen, it is needless for me to say that that would not be justice nor equity.

ADDITIONAL STATEMENT OF MR. JOSEPH ASHBROOK, MANAGER OF INSURANCE DEPARTMENT OF THE PROVIDENT LIFE AND TRUST COMPANY, OF PHILADELPHIA, PA.

Mr. ASHBROOK. Mr. Chairman and gentlemen, I learned that it would be agreeable to the committee that Mr. O'Brien and I should pass in review the arguments that have occupied your attention for the last few days. I expect to speak very briefly touching one or two points.

By the way of introduction I want to call your attention to the fact that up to the passage of what is known as the Armstrong bill in New York, it had been a cardinal principle all over the United States that a State should legislate only with reference to companies of its own creation, except that it should make such regulations respecting other State companies as would furnish evidence of the

entire soundness of such companies. As to any details of management, nonforfeiture, dividend, and everything of that sort, the other companies were left to be regulated by the States which created them.

A very notable illustration of that is found in the case of the State of Massachusetts. Probably there is no other State in the Union in which so much attention has been given to the general subject of insurance as Massachusetts, and at every session of the legislature of Massachusetts bills are brought before the legislature for consideration. Very early in the history of life insurance, under the inspiration of Elizur Wright, one of the great leaders of this business, the so-called nonforfeiture law was enacted, the first in the country, and Mr. Wright was very warm in the advocacy of it. It was claimed to be very important, and yet down to this time that law affects only the companies of that State. Notwithstanding that a large amount of business is written in Massachusetts by companies of other States, the law respecting nonforfeiture has never been made applicable to them. This was in recognition of the principle of interstate comity, which should preclude an attempt to manage the details of corporations of other States.

The Armstrong committee inaugurated a departure. In the first report they proposed to regulate the companies of other States almost to the same extent as New York companies. The regulations that they proposed were of the severest character. There had been, in their judgment, great mismanagement of the New York institutions, and it was thought those faults could not be regulated except, if I may use a word not in an offensive sense, by legislation of a decidedly paternal character. But after listening to arguments, those bills were amended and do not now apply to companies of other States excepting in certain particulars.

I want to speak particularly on two subjects, and briefly. Those subjects have been discussed, and I do not propose to go into them exhaustively; indeed, my object in discussing them at all is to give you gentlemen an opportunity of asking me questions if the subjects are not entirely understood. I think it very important that they should be thoroughly understood as a preparation for the consideration of this bill which is before you.

The first is the question of the select and ultimate method. Now, that has two applications: First, the application to companies which are just forming. That was very ably and fully discussed to-day and part of yesterday, so I do not propose to enter upon that discussion. It has, however, another application, and that is in determining the amount of expense that shall be paid by the companies for new business. Without intending any discourtesy to anybody, I want to say that the select and ultimate method is an experiment and has not been accepted by most actuaries. As a standard for measuring the value of new business to a company, it is not conclusive. If the Armstrong committee had contented itself with requiring that the companies should furnish to the insurance department each year the information called for by this method the information would have been of interest. Mr. Ames and the gentlemen who have this bill in charge have seen fit to eliminate that altogether, I think. I don't think it even remains as affecting the companies of the District of Columbia.

I said here the other day, and I simply refer to it briefly by way of refreshing your minds, that the opportunities for mismanagement of life insurance companies during the last twenty-five years have resulted almost exclusively from the system of deferred dividends. It left in the hands of the companies an immense amount of money for which they were not held to account. They could spend any amount of money they desired and nobody could question their acts, and the result was a lavish, wanton, and unnecessary extravagance in the management of the business. With the suppression by law of the deferred-dividend system, and with the necessity of these companies every year declaring a dividend, and giving the policy holders an opportunity to know how successfully and economically the companies had been managed, great good will result. There is no necessity for legislation on that subject. I point to the experience of companies that have been managed on the annual-dividend plan in confirmation of what I say. You will find those companies conducting their business in an economical manner. Without mentioning the companies by name, I will say that there are companies that stand prominently before the public to-day as successful companies, whose average rate of expense for the last ten or fifteen years has perhaps been not more than one-half of that of the companies under investigation.

Mr. STERLING. May I ask you a question, one which I think I asked of a gentleman the other day and it was not answered, or at least if it was I did not understand the answer. How at the end of the year does an insurance company estimate or figure the expense so as to determine how much of this dividend that comes from the loading of the policy shall be distributed back to the policy holders?

Mr. ASHBROOK. The premium, for purpose of illustration, may be divided into three parts—the cost of carrying the risk for that year, the amount of money that is to be set aside for the reserve, and the expenses of conducting the business. At the end of the year, if it is found that that part of the premium which provided for the mortality expense of that year was too high, the surplus is set aside. The money that had constituted the reserve of the company had been supposed to only earn $3\frac{1}{2}$ per cent interest. If it was found that it had earned 4 per cent, or under exceptional circumstances $4\frac{1}{2}$ per cent, the interest over $3\frac{1}{2}$ per cent was surplus. If it was found that the amount for expenses had not all been spent, the amount unexpended was surplus. That is the way of determining the surplus. I am giving you this now not as an actuary gives it, but in a familiar way. The premium, as I explained the other day, is the estimated cost of the insurance. The actual cost at the end of the year is determined in the way that I have roughly explained. The difference between the two is the surplus.

Mr. STERLING. How do you prorate it among the different policy holders—by a certain per cent on the amount of the premium?

Mr. ASHBROOK. You were not present this morning when I answered the question on that subject. Forty years ago, when this surplus was ascertained, it was prorated according to the annual premium on the policies of the company. That was a very crude and improper way of doing it. That was followed by the present system, which is known as the contribution system.

Mr. AMES. That is what you have just described?

Mr. ASHBROOK. That is what I have partly described. If you had a policy, your share of the mortality gain would depend upon your age, the length of time the policy had been in force, and the kind of insurance. If we had \$500 of your money in the hands of the company as a reserve and we had earned 1 per cent more than we had expected, you would be entitled to 1 per cent on that \$500. You would also be entitled to a share in the saving in expense of management in proportion to the loading for expenses upon your annual premium. In justice to myself I should say that I am giving a familiar explanation, and it is not as exact as if I were making it under different circumstances.

Now, to take up the subject of contingent reserve. The Armstrong bill provides that each New York company shall at the end of each year charge itself with its reserve and other definite liabilities, and then pay in dividends the difference between this amount and the amount of its assets, except that it may retain in addition to its ascertained liabilities an amount for contingencies, which amount is to be known as contingent reserve. The possibility of such contingencies arising is acknowledged by this provision of the New York law. The question arises as to the propriety of the limitation as to the amount of the contingent reserve. No limitation is necessary, unless it should be a requirement that the company must maintain at least a certain amount. A company paying annual dividends, if it erred at all, would be more likely to err in the direction of maintaining too small an amount rather than too large an amount. If it retained too much, it would diminish its annual dividends. As its popularity would depend mainly on the size of its dividends, it would be more likely to encroach upon its contingent reserve than to needlessly increase it.

The Armstrong committee not only erred in fixing the limit of the contingent reserve, but committed the serious mistake of making the percentage diminish with the size of the company, in the face of the fact that in all companies which have passed beyond the initial stage the contingencies to which they are exposed are relatively equal.

Mr. STERLING. Do I understand you to say that the New York law fixed the contingent reserve that you are speaking of now?

Mr. ASHBROOK. The New York law requires at the end of the year that the surplus shall be ascertained. Without going into details I will say that it requires that all the apparent gains shall be divided, excepting a certain amount of contingent reserve which they are allowed; but the amount of that contingent reserve is determined by a table that is altogether artificial and arbitrary. If a company has two or three hundred millions of dollars of money in reserve, the amount of contingent reserve might not exceed 5 per cent, an amount altogether insufficient.

Now, just one word in conclusion. Your patience has been exhausted on this technical matter which probably can have no particular interest to you, and I do not propose to tax your good nature by going further, excepting to make this remark: All the companies in the country—all the larger companies, all the companies outside of the companies that are just coming into existence—are doing business in New York State, and are under operation of the law of that State

respecting expenses. There is no need that you should legislate upon that subject at all. But I think Mr. Ames has done very wisely indeed in excluding from the bill a provision regulating the expense. I wish I had had the opportunity of making a suggestion to him before I arrived in Washington. I would have urged seriously upon him that he should have gone further and omitted the provision respecting the contingent reserve—that is, that it should not be included, although it was made applicable to local companies only.

Mr. BIRDSALL. What is your opinion as to whether there should be a report upon the expenses by the company? Even if there is no restriction upon the first year's expense, what is your opinion as to whether you would require the report by the company.

Mr. ASHBROOK. There is a very elaborate report now made respecting the expenses of the company. We are required to say how much in dollars we pay for new business, how much for renewing business, how much for this thing and that thing, and the reports made to-day are extremely elaborate. Then there is what is called the "gain and loss exhibit," in which we are required to show our actual gain in mortality, our actual gain in interest, and the actual gain in loading. I don't think any company would object to this call for information. Of course some reference must be had as to the practicability and expenses of furnishing that information, but we have nothing to conceal.

Mr. BIRDSALL. With a reasonable limit of expense there should be no objection to any report that might be required.

Mr. ASHBROOK. Do you mean as showing what our expense would be in reference to the select and ultimate?

Mr. BIRDSALL. I mean in a general way—any report which would expose the condition of their business.

Mr. ASHBROOK. I think that the most inquisitorial demand, if I may use that word, made upon us for information would not be resented.

Mr. STERLING. Would that apply to the list of policy holders too, so far as your views go?

Mr. ASHBROOK. I have such warm regard for my friend, Mr. O'Brien, and I am in such hearty accord with him on so many subjects, that I hesitate to appear to differ with him on any subject at all, but I do not agree with him thoroughly in regard to that; and I want to call the committee's attention to a fact which I mentioned to him the other evening. Possibly, thirty years ago, the Mutual Life of New York decided upon the extraordinary measure of throwing off 30 per cent of its life premium to any insurer. If a man took out a policy on which the table premium was \$100, he had need to pay only 70 per cent of that premium. There was no discrimination; everybody received it. It met with such disfavor that within perhaps thirty or sixty days there was such an uprising throughout the United States produced against it that the company receded from its position; it was compelled to. There was a meeting in New York presided over by Cyrus W. Field, a meeting in another part of the country presided over by ex-Secretary Bristow, and the opinions of attorneys-general in many States were invoked on the subject, and it was finally decided to be improper in every way.

Mr. STERLING. Did the opposition come from the policy holders?

Mr. ASHBROOK. It came from the policy holders entirely. All that is necessary in a great crisis of that kind is for some leader, some one man, to give one blast from his bugle horn, and there will be such an uprising as would check any company. My own idea is if you are going to inaugurate what is provided for in this bill you will make the management of the company unstable; you will give opportunity to jealous, envious, conspiring people to unsettle the management. The Pennsylvania Railroad elections are conducted in what way? The members all have the privilege of going there and voting at an election, but it is physically impossible for the greater number of them to go. What do they do? They do what you and I consider wise. They send their proxies to Mr. Cassatt, and unless there should happen something to utterly shake their confidence, that is the wisest thing to do. If he is not competent to be trusted with their proxies, they had better resort to some extraordinary means to bring about a change.

This curious condition which exists in regard to life insurance is not confined to life insurance, but it extends to all forms of organization. The course of events in the last few years has produced great concentration of business. Companies are formed and are expanded and expended until they reach dimensions almost beyond comprehension. The man who is interested in one of those institutions to the extent of a large part of his fortune, the man who gives the most minute and rigorous attention to private affairs, does nothing at all.

The question presented is one of grave importance and relates to all corporations. He would be a very wise man who could instantly bring about an adjustment, which it may take years to accomplish. The deferred-dividend system afforded the opportunity for the mismanagement that has occurred in certain companies, and along with that was the curious apathy and blind confidence of the public. This credulity is well illustrated by the remark made by thousands of intelligent persons, that "all companies are equally good." Such an absence of intelligent attention and discrimination was extraordinary. If I do not offend you by a homely illustration, suppose a hundred men should start out to buy houses for themselves, and not one of them an architect or real estate dealer or with any particular knowledge or training that would qualify him to use good judgment in buying a house, what percentage of the hundred would make a serious mistake in doing it? They would realize the responsibility, and in some homely way they would arrive at a safe conclusion. It is not immodest for me to claim to understand the subject I am discussing to-day. I have given many years of my life to it, but I do not hesitate to say that the average man is just as competent as I to make intelligent selection of a company if he goes about it in the right way.

What we want is public sentiment, and we have no public sentiment at all. I fear that this recent surprisingly hysterical exhibition on the part of the public with respect to life insurance will disappear, and the old apathy follow. What we want is intelligent public sentiment. Let me appeal to you gentlemen on a subject which you know more about than I do. What compels that extraordinary, that exceptional fidelity which characterizes the execution of private trusts all over the country, a fidelity scarcely equalled—for example, the

management of the estate of a deceased friend, to hold until the youngest child has reached majority? Is it the law? A man would dare to do almost anything else in the world before being false to that trust, and why? Because he would have committed the unpardonable sin. Other derelictions might be condoned, but the man who is false to a trust has an indelible stigma put upon him; and thank God that is the sentiment the country over, and it gives us infinitely more security than any legal enactment on the subject. It is healthy public sentiment. The best and surest safeguard for life insurance would be an intelligent public sentiment throughout the United States. If there had existed such a sentiment, the grave abuses disclosed by recent investigation would not have occurred. And, gentlemen, just in proportion as you go in the direction of paternalism, of saying to the citizen "You are incompetent to manage this thing; we will take it out of your hands," just in proportion to that will be the failure to create public sentiment.

I am opposed practically to all legislation on the subject of life insurance excepting that which requires us to give you the fullest information upon everything that we do. Nothing should be withheld, and it should be placarded so that everybody should see it. I said here the other day that our reports disclosed every dollar of our securities, the price paid for them, the market prices, the par value of the securities, every dollar of security that is held as collateral, and the amount of money. And one of these recent bills goes so far as to say that we shall furnish for publication the name of every borrower; and respecting our mortgage investments, you could go to an insurance department and get very minute description of fifteen, eighteen, or twenty million dollars worth of mortgages scattered all over the United States.

THE COMMITTEE ON THE JUDICIARY.

Saturday, May 19, 1906.

The committee this day met, Hon. J. A. Sterling in the chair.

The ACTING CHAIRMAN (Mr. STERLING). Mr. Cohen, you may now proceed.

STATEMENT OF MR. MAX COHEN, EDITOR OF VIEWS, WASHINGTON, D. C.

Mr. COHEN. Mr. Chairman and gentlemen of the committee, at the very beginning of my brief remarks I desire to express, for fear that I may be misunderstood, my hearty approval of the main features of the Ames bill. I realize, firstly, that the present District insurance code is very incomplete; in fact, it has been a wonder to me that the chief of this department, the present incumbent, has been able to so efficiently discharge the duties of his office under it.

If I correctly interpret the main and most essential provisions of the Ames bill, namely, its features for full publicity and in setting the commendable example of striving for the maximum of protection and the minimum of taxation, I confidently believe, and I speak as a student of insurance—for it is my business to be at least some-

what familiar with its various phases and problems—that it offers the most practical remedy for all the shortcomings revealed by the Armstrong investigating committee. In my opinion it will certainly exercise a more healthful influence for the promotion of the public welfare and in the interest of the great business of insurance than the harsh remedial legislation enacted by the New York legislature.

From the stress I lay upon the principle of the “maximum of protection and the minimum of taxation” I do not want you to infer that I would exempt any insurance corporation or association from legitimate taxation, sufficient at least to support a well equipped and efficient insurance department for this District, or for any State or Territory in the United States.

The ACTING CHAIRMAN (MR. STERLING). May I ask what you mean by the maximum of protection and the minimum of taxation—the cost or expense of insurance?

MR. COHEN. I am coming right now to that subject, because that is one thing that the public has never understood—that whatever burdensome imposition is imposed upon the insurance corporation finally falls upon the policy holder. Now, upon this very subject, I emphatically declare that the tremendous taxation and the burdensome exactions which many of the States legally impose upon insurance corporations were largely responsible for the criticisms of the vast sums of money expended by those institutions to defeat unnecessary exactions and the many strike bills always on tap in various legislatures.

Now, let us investigate the subject of taxation. Think of it, gentlemen, and I quote a little from authority. In 1904, 32 life insurance companies alone paid nearly \$10,000,000 to the States in taxation. In 1903 they paid nearly \$9,000,000. If I may I will refer to the total. The Insurance Age, of New York, in its issue of last November, conclusively proved that American life insurance companies have paid nearly \$93,000,000 in taxes during the past twenty-five years. In other words, the States have ruthlessly inflicted this heavy burden upon the policy holders and thus imposed the greatest tax upon their thrift.

MR. DE ARMOND. Do you happen to have the figures paid for salaries during the same time?

MR. COHEN. I can furnish them to you if necessary. You will find that criticised expenditures sink into insignificance alongside of the taxes.

MR. DE ARMOND. Have you the figures showing how much money they took in during the same years?

MR. COHEN. No, sir; but I can furnish those figures.

MR. DE ARMOND. I supposed you would have them, because the question of how much taxes they paid is not so much of importance unless you have the figures as to how much money they took in during the same period.

MR. COHEN. I only referred to that fact so as to let you know that if you impose harsh and burdensome exactions upon corporations in the States that they do not fall upon the corporations. The officer who gets his salary is not hurt, but the burden falls upon the individual policy holder in that State. It is a tax upon his thrift. He is already assessed for his education and personal property. Now, why should he be assessed upon that which is positively the best trait

of human nature and of humanity—to provide for his dependent ones?

Mr. DE ARMOND. I wish you would furnish figures showing the amount paid for salaries and in commissions and the amount collected during those years.

Mr. COHEN. I shall be pleased to do so. The Spectator, of New York, the Weekly Underwriter, or the Insurance Monitor, of New York, and, I think, even your superintendent, could furnish the figures at any time you desired them.

Now, I saw Mr. Henry C. Lippincott, the agency manager of the Penn Mutual Life Insurance Company, of Philadelphia, here, and I was sorry that he could not remain longer at this meeting so as to also address you. Hence I desire to invite your attention to the repeated efforts of this gentleman to mold public opinion. I refer to a lecture delivered by him in 1899 on "Taxation of Insurance Companies," in which he said:

The legislature which represses life or fire insurance can extenuate its violation of all property only upon the theory that it is ignorant of the effects of its acts. It would be an unjust reflection upon the intelligence of many members of the legislature to say that they do not know who it is that pays all such taxes; and yet inquiry will develop the fact that a considerable percentage of the legislative body has a vague impression that life and fire insurance institutions are distinct entities, wholly apart from the members who compose them. As the business of life insurance is mainly transacted by mutual companies, all taxes are paid by the members of those corporations, and to the extent to which they are paid the cost of insurance is enhanced. Apparently the corporation pays the tax; really it is paid by the members, whose premiums are correspondingly affected. Mutual life insurance, however, is so conducted that this tax is an indirect one in the sense that it is not immediately brought to the attention of each individual. Such companies, in order to be on the safe side, collect more than they need, returning the excess usually every year, or at the end of a series of years. Manifestly this excess is in every case diminished by the amount paid for taxes, which thus plainly come from the pockets of insured members.

Mr. DE ARMOND. Why does not that apply to everything else—farms, manufactures, machinery, and everything else?

Mr. COHEN. I do not agree with you.

Mr. DE ARMOND. Why doesn't it, if it does not?

Mr. COHEN. Why do they make the insurance corporations this target to draw out the money that belongs to the policy holders?

Mr. DE ARMOND. I understand you to make this a special class which has a peculiar hardship?

Mr. COHEN. So it is.

Mr. DE ARMOND. What difference is there in principle from the taxing of a farm; does not the man have to sell his products high enough to pay his taxes?

Mr. COHEN. One mode of taxation is fair and the other mode is excessive and unjust.

Mr. DE ARMOND. Why?

Mr. COHEN. Because there is too much, more than is necessary, more than should be exacted, two-thirds more than should be exacted.

Mr. DE ARMOND. That is another question. I understood you to refer to the taxation of insurance companies in general?

Mr. COHEN. No, sir. Even in my preface I said that I was in favor of equitable and just taxation which is necessary to carry out—

Mr. DE ARMOND. What rate are you in favor of?

Mr. COHEN. I think about one-half of the taxes would be a fair pro rata.

Mr. DE ARMOND. About what rate would that be?

Mr. COHEN. I would not want to go on record as suggesting a mode for general adaptation, because while one State might require a large amount another State would require a smaller amount.

As early as 1866 the highly respected Mr. C. C. Hine, the late editor of the Insurance Monitor, of New York, prepared and distributed all over the country circular letters for the purpose of molding public opinion in opposition to this unjust mode of taxation. But as all subsequent efforts, they also were fruitless. The language of one of these circulars from which I quote applies in part to the present-day conditions as truthfully as to those of forty years ago. Here is a quotation from one that was written over forty years ago to create public sentiment:

Legislation in the several States toward the insurance companies of sister States has proceeded in a spirit of persistent and injurious hostility, until it has created an almost prohibitory burden of taxes, forced loans, deposits, licenses, subsidies, compulsory advertising fees, etc., State, county, and municipal, that would surpass the belief of one not familiar therewith. Generally these laws do not look to the real security of the policy holder or the strength of the companies, but are apparently conceived in a temper of extortion and unfriendliness to enterprises that are the handmaids of commerce and the guardians of all our destructible values.

Mr. DE ARMOND. The writer was either wrong forty years ago or things have changed for the better in the forty years?

Mr. COHEN. Changed somewhat for the better, but I am only speaking now of this principle which makes the thrifty man pay a penalty upon his thrift.

Mr. DE ARMOND. But that man forty years ago was finding the same fault with the conditions then?

Mr. COHEN. He commendably attempted to mold public opinion and to interest the public in the regulation or in the administration of insurance. But it has been impossible to mold a public sentiment on conditions positively hostile to their interests, and for that reason I quoted this language.

Mr. DE ARMOND. As I understand it, the writer from whom you quote made the claim that conditions with reference to taxation were so hard then that they were almost prohibitory, so far as crossing a State line was concerned. It has been demonstrated either that he was entirely wrong or that those conditions have greatly changed and improved because the companies have crossed State lines?

Mr. COHEN. I agree with you as to somewhat changed conditions. But in the first place, I am referring to the fact that it is an unjust and unnecessary tax, and, secondly, that we enjoyed such prosperous years that the average investor in a life policy would never investigate the subject of how he contributes unnecessarily in the matter of taxes; and I think it is a wrong upon him, and I think it ought to be remedied; and when I say "remedied" I mean to say that a State might exact even a little more than sufficient to pay the running expenses of a well-equipped and efficient department to protect the policy holders.

Mr. DE ARMOND. Your idea really is that the insurance companies ought to pay only what would amount to a nominal tax?

Mr. COHEN. Not exactly nominal. I say a "sufficient" tax to answer all the purposes, and even, if necessary, to help occasionally the State treasury.

Mr. DE ARMOND. How much do you think that tax should be?

Mr. COHEN. As I told you, I think if they cut the tax in two it would be more than ample.

Mr. DE ARMOND. You think they are paying double taxes then?

Mr. COHEN. I do, positively.

The reason I lay so much stress on this subject is because the recent insurance investigation proved that the largest sums of money expended, for which the companies have been criticized, were to defeat undue taxation, hostile legislation, and the strike bills on tap in the various legislatures, and I venture to say, gentlemen, that although these officers have been criticized for their method of fighting this hostile legislation and the sums of money expended in doing so, they were actuated by good sound business principles, and because they realized the useless endeavor of molding public opinion sufficiently to go into the legislatures and stop them. And I therefore endorse every word uttered by Mr. McIntosh, the counsel of the New York Life, who addressed you a few days ago in vindication of one of the greatest personalities in the business of life insurance. I also add my humble tribute to the memory of the late John A. McCall; to his fine quality of heart and mind, and to his stupendous ability. That such a man, so adequately equipped for usefulness, and because he so manfully shouldered responsibilities, should have been so unjustly assailed by the yellow press, and, while so critically ill and gasping for breath, so mortally stabbed by false friends in his own official household is positively the irony of fate.

Mr. DE ARMOND. Going back to the paying of large sums of money to influence legislation, do I understand you to justify that on the ground that taxes are too high?

Mr. COHEN. They are too high, but I want to say that it was not to influence just legislation, but to defeat hostile and unjust legislation, and if you would ever examine or inquire into the many strike bills that are introduced in the various legislatures, that are a menace not to the corporations, but a menace and punishment to the policy holders in the corporations—

Mr. DE ARMOND (interrupting). What do you mean by "strike bills?" I wish you would explain that term.

Mr. COHEN. Strike bills that introduce whereas and resolutions that impose additional exactions on a company—taxation and burdensome and unfair methods of requirements which must eventually always be borne by the policy holder. That is what I want to impress upon you.

Mr. DE ARMOND. The legislatures in general are supposed to be made up of the representatives of the people elected by the people?

Mr. COHEN. Yes, sir; but I want to say here that there is a difference and that there are exceptions. It is my pleasure to say it, and I want to compliment this committee for the patience exhibited by it in listening to the various representations that have been made on the part of these gentlemen representing different interests during these hearings, and I want to call your attention to the fact that it is mighty fortunate for this nation that we have a United States

Congress. As a student of insurance and as a student of the general situation, I can truthfully say that you can not point to one act of legislation by Congress, notwithstanding all the charges that have been made of it playing at party politics and the charges of jingoism, that has ever interfered or injured one commercial, financial, or industrial interest.

Therefore I am all the more glad that this body is now considering this subject. But if you would examine and inquire into the methods of some of our State legislatures I think you would not have a high opinion of some of the gentlemen connected with them in their various endeavors to secure what they term "consideration." When I say that I do not imply this to be in general; I only want to refer to the fact which can be made apparent to any gentleman who investigates the subject, that there has been a great deal too much of attempted injurious legislation.

Mr. BIRDSALL. I assume that, excepting that class of legislation which has been instituted in the interest of one class of insurance as against another class of insurance by these companies themselves, that all these efforts have been efforts in the interest of the policy holders?

Mr. COHEN. I fully agree with you. It is one of the misfortunes of human nature that one gentleman who represents one system thinks his system is better than another system, and there is not among human nature that broadness that, perhaps, should prevail. It is for that very reason and because so many misstatements have appeared in the daily press of the remarks made at these hearings, that I have voluntarily come here to present my few remarks on this subject. It is positively awful the way some things are misrepresented; one system ridiculed by one and the other system ridiculed by another, when I think you can agree upon it that all the legitimate institutions can work in harmony for the benefit of all the public.

Mr. DE ARMOND. I would like to ask you whether you approve of the use of the money of insurance companies—any companies—to defeat legislation regarded as unjust or hostile with reference to taxation?

Mr. COHEN. I think that if I were the executive officer of a company and I saw a bill introduced in a legislature which threatened to injure my policy holders, I would use every possible effort to defeat it. I would think it my duty.

Mr. DE ARMOND. And you would use the money of the company?

Mr. COHEN. Certainly, if necessary; because the loss by the enactment of unjust legislation would be twenty times greater.

Mr. DE ARMOND. Then you think it is a part of the duty of insurance officers, I mean officers of insurance companies, to use the money of corporations with reference to legislation?

Mr. COHEN. Oh, no. I would say that when obnoxious legislation, burdensome legislation, is proposed which endangers the interests of the policy holder, then it is the duty of the executive officer to use his best efforts to defeat it.

Mr. DE ARMOND. Who is to determine whether or not the funds of the company should be used in such a way?

Mr. COHEN. The officials.

Mr. DE ARMOND. The management of the company?

Mr. COHEN. The officers in charge, the executive officers in charge of these institutions, and their directors, their boards of directors.

Mr. DE ARMOND. You think that whenever those in charge of the management of an insurance company think that in the interest of the company the money of the company ought to be used to defeat pending legislation, that money may be properly used by them for that purpose?

Mr. COHEN. I want to say right now that all the alleged graft, shortcomings, and extravagant expenditures which have been developed by the recent investigations are but a minnow to the whale when compared with the exactions which the States have legally imposed upon the policy holder. I will take the sum total of all and every item charged in this recent investigation, and I will show you that individually it amounts to probably from 25 cents to 40 cents to the policy holder, where the exactions the States have imposed upon him costs from \$5 to \$20.

Mr. DE ARMOND. Have you the figures so that you can show them side by side?

Mr. COHEN. I can furnish the figures at any time.

Mr. DE ARMOND. Now, let us get the relation of 25 cents to \$5. That is about 1 to 20, and the relation of 20 cents to \$10 is about 1 to 40.

Mr. COHEN. That is right.

Mr. DE ARMOND. You think that for every dollar that has been spent in all these various ways which some people call corruption—

Mr. COHEN (interrupting). I do not call it corruption.

Mr. DE ARMOND. Some people call it corruption.

Mr. COHEN. Because they do not understand it.

Mr. DE ARMOND. You think that for every dollar expended in all these various ways, the aggregate of the sums used to affect legislation and in different other ways, as disclosed by the Armstrong committee, from \$20 to \$40 have been taken from the policy holders by unjust and excessive taxation?

Mr. COHEN. Positively. I want to call your attention to the fact that in one State at one time they exacted a tax of 10 per cent on the premiums. In other words, a man who paid \$200 premium on a policy, say of \$5,000, had to pay the State \$20. That is a good illustration. Of course that act was immediately repealed.

Mr. DE ARMOND. What State was that?

Mr. COHEN. It only shows the hardship of some legislation.

Mr. DE ARMOND. What State was that?

Mr. COHEN. That was one time in Pennsylvania. In Ohio to-day there is a tax of 3 per cent on premium receipts. Why should a man who pays \$200 on a policy of \$5,000 be compelled to pay to the State \$6 on that policy, not counting the amount he pays for other requirements, license fees, and numerous other little things? Why should he be compelled to pay that \$6? That is, if he paid \$3, it would be more than a sufficient sum for all purposes. I only go into these matters in order to demonstrate the necessity of molding public opinion upon this question, to let the people know that, whatever burdensome exactions in the method of taxation are imposed upon institutions, it is the citizens who are compelled to pay them.

Mr. DE ARMOND. Then, as I understand, you are in favor of the molding of public sentiment in the direction of lower taxation, and

at the same time you advocate and justify the expenditure of money to influence legislation?

Mr. COHEN. I justify reasonable methods to defeat unreasonable taxation, which any business man or any head of our industrial or financial institutions would consider perfectly legitimate.

Mr. DE ARMOND. Then I understand that you justify this expenditure of money?

Mr. COHEN. I am perfectly willing to go on record that even the \$1,000,000 which was spent by President McCall, under the auspices of Andy Hamilton, was justifiable; and I further state that it not only has saved millions of dollars for his company and his policy holders, but has saved millions of dollars for the policy holders of other companies, and upon that basis, as far as my information goes, I justify it.

Mr. DE ARMOND. The question I want to ask you is whether justifying that expenditure of \$1,000,000 or more—starting out with that justification—whether your appeal to the average legislator for lower taxes is proper?

Mr. COHEN. I think the very fact that this bill has been considered by this august committee and looked upon as a Federal measure, and as far as the hearings of this committee have gone, and of its general appearance, it will have a decided healthful, vigorous, and beneficial influence. And I want to call your attention to another fact: That questionable conditions which have existed will never again exist in the future; that the splendid investigation of the Armstrong committee has brought about a notable reform which positively insures that in the future no unnecessary expenditures will be made, but insurance companies and all corporations must spend money for purposes that are perfectly legitimate. They must necessarily pay the expenses of gentlemen, for instance, whom they send to your hearings. All will favor that conservatism be adopted; but when I say "conservatism" I do not mean the prohibitive, restrictive, remedial legislation enacted by the New York legislature. In my opinion, instead of benefiting it is driving these giant companies into a method of centralization, which I do not approve of, and neither do you.

Mr. DE ARMOND. You speak of a reform having taken place which would prevent the occurrence of such a condition of things again. Is that reform in the insurance companies?

Mr. COHEN. Decidedly; but I want also to say to you that the great preponderance of our American life, fire, and accident insurance institutions have been and are now conducted as honestly and as conservatively as any other business interests in the United States. I was proud to see that you got just a little semblance of the type of men who control the destinies of insurance, such men as, for instance, my friend, Major Ashbrook, of the Provident Life. I assure you that such, as well as thousands of other men (and you have a representative right here of the Penn Mutual Life—Mr. Goulden, a Member of Congress), men who would sacrifice their lives to see to it that every interest of the policy holder is honestly administered—that his rights are fully protected.

Gentlemen, while I do not condone any shortcomings revealed by the investigations, I do maintain that the situation does not warrant prohibitive and restrictive legislation; that the preponderance of

our American insurance institutions, whether life, fire, accident, etc., are honestly, conservatively, and efficiently administered. and that the policy-holders' interests are most carefully guarded and protected. In exemplification thereof, I will further state that the very absence of representatives of the fire insurance companies at these hearings is chiefly due to the fact that every one of them is now most busily engaged in facilitating the process of settling for the tremendous losses incurred through the awful San Francisco calamity, and in making all possible personal sacrifices to make good every dollar of indemnity provided for in the policy contracts issued by them. And because some newspaper reports, originating from the expressions of an eminent actuary at this hearing, of a gentleman who honestly believes, and perhaps also so unconsciously makes other people believe, that he is endowed with "the wisdom of centuries," has led to some misapprehension in the public mind, it now affords me all the more pleasure to state that even the few fire insurance companies who have been compelled to retire, have so reinsured their business that every cent of their losses will also be paid in full.

I think it is wrong to pass any legislation upon the assumption that men are dishonest. I think it is an outrage upon American citizenship and upon American industries, and it has gone on until now the people over in the foreign countries think that all the honesty and all the integrity is centered outside of this country.

I want to call the attention of this committee to one fact, that this very remedial legislation of a prohibitive nature strikes a vital blow at the creative genius, upon the man who plans and invents, the man who designs the forms of policies most acceptable to the public, the splendid personality of the hustling agent who has to labor for months and months to stimulate the magnificent and beneficent work of insurance. Why, gentlemen, but for his labors—and nothing has been said here about the bone and sinew of these institutions, the agency forces, the men who build them up—but for them, two-thirds of the insurance would never have been written. Why, they are entitled to every cent of commission they make.

Mr. BIRDSALL. The object of all supervision by the States is the protection of the policy holders?

Mr. COHEN. Yes, sir.

Mr. BIRDSALL. The State is necessarily confined to business done within its limits?

Mr. COHEN. Yes, sir.

Mr. BIRDSALL. And whether the tax is upon the premium or otherwise, it is necessarily confined to the business of that State?

Mr. COHEN. Yes, sir.

Mr. BIRDSALL. Upon what theory could any tax be justified beyond the limit of the reasonable cost of the maintenance of the bureau of supervision?

Mr. COHEN. I do not justify it.

Mr. BIRDSALL. You say that you might go beyond that; upon what theory would you go beyond that?

Mr. COHEN. Only that in estimating they might make a mistake and add a few thousand dollars.

Mr. BIRDSALL. But your idea is that it should not exceed that limit?

Mr. COHEN. Decidedly. Remember one thing, gentlemen, the

harsh, unjust legislation in the State. Take the position of the company. It has interstate branches throughout the country. It has gone to large expense in establishing agencies. It has made contracts with its brainy workers to work the business of life insurance in its behalf. All at once here comes legislation and the administration of some autocratic insurance commissioner, and when I say "autocratic insurance commissioner" I want to say that the personnel of the insurance commissioners has greatly improved in the last years. But I remember the time when some of them would go on junketing expeditions and take trips to Hartford and New York, particularly in the summer time, and they would go into the office and say, "I have come here to examine you."

The foreign companies caught it the worst, because they were not in a position to put up a stiff fight. Some companies would not submit, but the diplomatic gentlemen of some companies would also say: "Meet us at Delmonico's," and "How much is your bill?" Those days have existed. I want to say that my impression of the insurance commissioners has broadened very materially, and that the leading members at these insurance commissioners' conventions have zealously endeavored to remedy this evil. They are the very men that have made any of their associates who resorted to such practices feel that they were pretty small fry.

MR. BIRDSALL. Coming down to brass tacks, how does this bill affect taxation?

MR. COHEN. I want to compliment my young friend, Mr. Ames, because he has struck the keynote in his bill—in the minimum of taxation and full publicity, which is of greater benefit to the public than all other requirements. I say to you now, if I had my way, or if I could impress Mr. Ames and this body, that I would eliminate all possible restrictive and prohibitory provisions from the bill. I would so modify it that it would be an incentive for all insurance corporations to come in under this measure, so that when such institution or corporation had received a clean bill of health from such a department, when it had received the indorsement of its head, that that would be the best guide to the public at large that it was entitled to public confidence and entitled to their patronage. But also remember that you gentlemen of Congress must also make up your minds to sufficiently equip such a department with the necessary means to enable it to secure ample clerical help, and you must also give ample authority to the chief of the department to faithfully and impartially discharge the duties of his office.

I only want to refer in conclusion to a few of the misstatements of the hearings which have been made in the newspapers. I find, for instance, Senator Bulkeley heralded as representing the *Ætna Fire Insurance Company*, when he is the president of the *Ætna Life Insurance Company*. Statements also appeared as to an attack upon industrial insurance which would be unjustifiable, but which I am sure I never heard at these hearings, and I have been a very patient listener.

I also caution you not to lay too much stress upon theories. Now, I have a very high regard, for instance, for the actuaries of the companies; but, gentlemen, I do not think they are endowed with all the creative genius. I do not think I would want some of these technical men to run the companies. These do not give the impulse and the

motive power to the success of an institution. And in that very connection I want to refer to this great and eminent actuary, Mr. Dawson, who addressed you here, and of his perhaps unconscious influence in helping to enact a system of legislation so destructive of the Anglo-Saxon spirit of energetic effort and progressiveness; legislation so suspicious of man's integrity and so harmful of the creative and inventive genius which has so expanded this business of American insurance, and so injurious to the agency force and the thousands of men who have built up these large institutions—

Mr. DE ARMOND. What particular feature of the bill do you refer to?

Mr. COHEN. Firstly, the limitation on the ratio of business. You must remember, gentlemen, that here are institutions that have made contracts with their agents to write business. They have agencies throughout every hamlet in the United States. Now, gentlemen, they must now necessarily be compelled to violate some of their contracts. To therefore throw them into a morass of unproductiveness is not, in my opinion, wise and judicial legislation.

Mr. BIRDSALL. You limit it to the amount of business?

Mr. COHEN. On the amount of business; I refer to restrictions. I contend that the company as well as the agent, the insurance worker, the toiler, is entitled to apply its utmost endeavor.

Mr. DE ARMOND. The object of this legislation is to give a better opportunity to comparatively small companies and new companies in getting business?

Mr. COHEN. I fear not. I fear that the effect of the legislation will be to centralize those large institutions and to accomplish the very purpose which I believe you would most object to.

Mr. DE ARMOND. That may not be under the limitations that now apply to all?

Mr. COHEN. I refer especially to encouraging a spirit of inertness, to a dull, melancholy system of conducting the business of an institution which has been equipped to write a large volume of business.

Mr. DE ARMOND. That makes an opening for the others, the smaller ones and the new ones?

Mr. COHEN. I do not think it does for that very reason. I think the business is yet in such a primitive state as to invite ample competition. I think you can not apply the word "trust" to any insurance institutions, because the competition is always very keen, as has been proven by the recent investigation. But I further contend that the method of remedial legislation of New York, especially in compelling a company to publish a list of its policy holders, has been just directly in restraint of trade.

Mr. DE ARMOND. The large companies?

Mr. COHEN. Yes, sir; the principle is there.

STATEMENT OF HON. JOSEPH A. GOULDEN, REPRESENTING THE EIGHTEENTH NEW YORK DISTRICT, AND GENERAL AGENT OF THE PENN MUTUAL LIFE INSURANCE COMPANY OF PHILADELPHIA.

Mr. GOULDEN. Mr. Chairman and gentlemen of the committee, I appear before you, not as a Member of Congress, but as an insurance man, having been engaged in that business since 1868. I alone am responsible for what may be said, as I do not represent my company in any capacity here to-day.

I have been very much interested in this bill as well as in the investigation in my own city by the Armstrong committee. I congratulate this committee upon their patience and fairness in these hearings. I can realize fully the tax it is on your time.

The bill introduced by my friend from Massachusetts, Mr. Ames, is in the main an excellent one. I have some criticisms, however, to make on it, but fortunately or otherwise there has been so many amendments proposed and accepted by him that I am at sea to know just what there is to criticize.

First, permit me to make some general comment upon the bill, particularly the clause that relates to discriminations; in other words, rebates. There has been a great deal said about this matter. I have been a sufferer with the rest of the managers, because I have maintained a general agency for many years.

My agents had to live, and if they did not earn it out of their commissions I suffered financially. However, the benefits from rebates went to the people who took insurance, hence can not be credited to profits of the agent. May I say that in New York, and other States as well, many men, prospective insurers, demanded rebate. I think there is a clause in the bill of Mr. Ames that prohibits, as far as can be done, discriminations, which merits your approval. This can not be made too drastic.

The provision providing for the payment of good salaries to the bureau officials I heartily indorse, because experience teaches that cheap men are dear at any price. I would rather pay a man two or three hundred dollars a month than to employ one who thought that he could earn only \$50 a month. I should be the winner on the high-priced man. The gentleman from Massachusetts, in his bill now before you, has provided for sufficient salaries to secure the best men for the management of the proposed improved department which you expect to give to the country. It seems to me that should this committee in their wisdom report a bill that would prove a model bill, it might be accepted by many of the State departments of insurance, and in that way save a great deal of annoyance and expense to the insurance companies as well as to the States.

I took occasion the other day to indorse what the gentleman from Connecticut, the president of the Ætna Life Insurance Company, had to say in reference to two items, viz, commendation of the insurance commissioners of the different States as well as the honesty of management of the great majority of our American companies. However, I want to go on record as not approving—and I do not say this as a partisan—what was said by the same party with regard to contributions to campaign funds. Emphatically, as a policy holder, I object to it, and I would not care a fig what party might be benefited. The principle is wrong and should be stopped.

MR. BIRDSALL. Did your company at any time contribute to a political campaign?

MR. GOULDEN. In answer to Judge Birdsall of the committee, I would say that in compliance with a demand made in 1896 our board of directors voted \$10,000 to a certain national campaign committee. Let me say here that some one representing such a committee made a request for funds, and we in common with many other Philadelphia institutions complied. To my mind it was a hold up. Again in 1900, and I believe in 1904, it was tried, but failed owing

to the opposition of certain trustees, particularly one from Massachusetts, a strong partisan, from which came the demand for campaign funds. The gentleman from Massachusetts is well known throughout the insurance world.

Mr. TIRRELL. You mean Mr. Plympton?

Mr. GOULDEN. Yes, that is correct; I alluded to him.

The New England Mutual Life Insurance Company, of Boston, before complying with the demand of 1896, consulted its counsel, Mr. Stephen J. Foster, one of the leading attorneys of the State of Massachusetts. His opinion was that the directors would be individually liable for any contribution of this character. It is unnecessary to say that the company did not comply with the request.

Mr. BIRDSALL. You referred to it as a "hold up." What do you mean by that—that there was a threat?

Mr. GOULDEN. The demand was, as I understood it, rather persistent, and perhaps insistent.

Mr. BIRDSALL. Were they threatened with inimical legislation?

Mr. GOULDEN. No; I think not. There was, however, a strong demand, and corporations, as a rule, felt that it was easier to comply with it than to refuse, and likely looked on it as a duty under the circumstances. The wish, I imagine, was father to the thought and the feeling generally in all financial institutions at the time, that they were justified in the matter.

Another subject alluded to this morning by the gentleman from Washington, the editor of Views, in regard to legislative expenses, I am sorry I do not seem to agree with him. I should not be in favor of one dollar being contributed from the funds of any insurance company to influence legislation. I should consider it as bad, or worse than the campaign contribution. That has been the trouble at many of our State capitals. It was current rumor that to be a senator at Albany in the past was equal to a gold mine, worth as much as \$50,000 or more to the right man. The "house of mirth"—Judge Hamilton, Andy Field, and others were not figments of the imagination at Albany. Much of the vast sums supposed to have been handled by these and other statesmen came from the insurance companies. This is no secret. Every New Yorker knew of these rumors. That money was freely spent in Albany, and perhaps in other State capitals, is well known.

Mr. BIRDSALL. I know that you do not want to do the previous gentleman an injustice?

Mr. GOULDEN. No; for Mr. Cohen is a gentleman of ability and character, and whose friendship I esteem and value highly.

Mr. BIRDSALL. I gathered from his remarks he confined them to legitimate expenses, such as the expenses of the gentlemen coming before this committee.

Mr. GOULDEN. I may say that I do not regard anything in the direction of unduly influencing legislation as legitimate.

Mr. COHEN. If you will allow me, I not only referred to the New York legislature, but the various legislatures.

Mr. GOULDEN. It has been, I think, just as bad in Pennsylvania, Illinois, and elsewhere, I am sorry to say.

The ACTING CHAIRMAN [Mr. STERLING]. Suppose an insurance company or any other enterprise should learn that a bill that they considered hostile to their business interests had been introduced in

a legislature, and that company would send what they call a legislative agent to present the matter to the committee to whom the bill had been referred. That would necessarily incur some expense. Would you think that would be a legitimate or an illegitimate expense?

Mr. GOULDEN. I think it would be legitimate to pay his expenses while there, but not to allow the legislative agent to use money for the purpose of influencing legislation.

Now, a word or two about the Armstrong bill. In the main, it is to be commended and I indorse what was so ably said by the president of the Life Underwriters' Association, Mr. Scovel, the other day before this committee. I disagree with him, however, on the matter of section 96, limiting the companies in new business. I do not imagine that he took into consideration the language of the Armstrong bill on this proposition. The committee and the legislature of New York have gone beyond their legitimate sphere of duty, in my judgment, in undertaking to limit the amount of new business to be done by a life insurance company. I should be willing to do the same thing, however, in a different way, by limiting the expenses. You will find on page 51 of the Armstrong bill a limitation of expenses:

Sec. 97. *Limitation of expenses.*—No domestic life insurance corporation shall in any calendar year after the year nineteen hundred and six expend or become liable for or permit any person, firm, or corporation to expend on its behalf or under any agreement with it (1) for commissions on first year's premiums; (2) for compensation not paid by commission, for services in obtaining new insurance exclusive of salaries paid in good faith for agency supervision either at the home office or at branch offices; (3) for medical examinations and inspections of proposed risks; and (4) for advances to agents, an amount exceeding in the aggregate the total loadings upon the premiums for the first year of insurance received in said calendar year.

The suggestion that was made to the Armstrong committee, and one that I should recommend, would be to omit the third item, "medical examinations and inspections of risks." I think that can be properly chargeable to general expenses. Then in addition to that I should add the saving which results from the fines on cash surrenders. To illustrate, I have a policy in the Penn Mutual Life Insurance Company for \$10,000. Its cash value to-day is say 90 per cent of its reserve value. If I determine to give it up, very properly I should forfeit that 10 per cent. Now, it seems that the forfeiture which goes back into the general funds, and a good sound risk goes out of the company, that this gain could justly be used to secure a new member. As a rule a risk that has become impaired keeps up the insurance. Beyond these two suggestions, and the limitation of renewals to nine years, to which I am opposed, I heartily indorse the Armstrong committee's provision for limiting expenses. With this limitation it will be impossible to do the great business that has been done in the past; and, may I say, it was largely due to the rivalry for volume of new business—the desire to be first in the ranks of the insurance companies of the world—that led to all this extravagance and the abuses that naturally followed. There were three companies—I shall not mention names—who, in their rivalry for business, each trying to outdo the other in new business, in assets, and in everything that counted in life insurance, went ahead and did business regardless of cost.

I remember well when the revenue stamps were attached to policies during the Spanish-American war that men in the city of New York gave a certain company's policies away as chromos. The company did not only pay 100 per cent for the first year, but in addition paid for the revenue stamps to get business. Had they been limited in their expenses, as proposed, this could not have happened. It would have been impossible under the amendment suggested for companies to pay more than 50 or 60 per cent the first year for new business. My contract is 30, 35, and 40 per cent for new business on different forms of policies, and whatever I pay over and above that I must do it personally. I have had to pay more than that to get business. My agency writes in the neighborhood of \$2,000,000 yearly new business, and at the end of the year if we simply had the year's business we would be much poorer. We are paying for the new business not because we want to pay such high commissions, but because we have been driven to it by unfair competition. I say that, in my judgment, the limitation of expenses will cover the other item which the Armstrong committee has put in as No. 96, which I deem entirely necessary, and uncalled for.

Taking up the bill of Mr. Ames, the first suggestion I find is on page 3, lines 3, 4, 5, and 6. There is objection to that language because it applies to companies of all States. I think it should apply only to companies organized in the District of Columbia.

There is the same fundamental error in the bill which was in the original Armstrong bills, and which under the advice of Mr. Hughes that committee corrected before reporting the amended bills. I refer to the matter of interstate comity, and call your attention to the third, fourth, fifth, and sixth lines on page 3 of the bill, providing that—

All foreign insurance companies, as a condition of transacting any business of insurance within the District of Columbia, shall be subject to the provisions of this act.

They propose that every company which wants to do business in the District must conform its business, not only in the District, but everywhere, to the provisions of the District Code. You can appreciate that companies being chartered by other States and subject to restrictions contained in the laws of their own States, if there was a single conflict between the practice of the home States and the practice of the District it would be impossible for a company to comply with the District law and it could not have the right of doing business there. The proper thing, of course, for the District to do is to establish a code for its own companies. They should not attempt to ask the companies to transact business everywhere in accordance with the District requirements, and to do so will be to lead to much confusion, and destroy the purpose for which the Ames bill has doubtless been framed.

Mr. BIRDSALL. In other words, you think that provision is broad enough to cover everything to be covered by this act?

Mr. GOULDEN. Yes. I think the District of Columbia should attend to its own business and look after its own companies and let other States manage their affairs, because there will be trouble between the States and the District if the bill should be passed in that form.

Mr. AMES. There has been an amendment suggested.

Mr. GOULDEN. I have inserted my views on that matter, but am glad to learn of the amendment.

The next provision is on page 16, with regard to preliminary term. I must say, personally, that I am inclined to be in accord with the bill on that, but realize the fact, Mr. Chairman, if you do not allow the preliminary term no new company can be organized with the hope of success. Most of the young companies now in existence and doing well will have to go out of business, I fear, unless they are allowed to charge that preliminary term which the Massachusetts department prohibits. I may say that, so far as my company is concerned, it does not need this advantage, but I believe it would be wise to engraft it in the bill in order to encourage the formation of good substantial life insurance companies as well as to encourage those now in existence and in their formative period. The first fifteen or twenty years of a life insurance company is necessarily an experimental one. If they succeed and obtain sufficient business on which to prorate expenses and average their losses they will be successful, otherwise go to the wall.

Now as to pages 24 and 25, they have been discussed at some length. I think companies should be allowed to do accident and individual liability combined with life insurance. That is proper, and I do not see any objection to it; but, as I understand, the bill as originally drawn prohibits one company from doing a business with two or more kinds of insurance as above indicated in one policy contract.

Now, in regard to participating and nonparticipating policies, which is found on page 31. I think they should be permitted to do both. My company has never done so. Our counsel has ruled that a mutual company could not do a stock or nonparticipating business under the laws of Pennsylvania. However, I see no real objection to it.

Mr. AMES. Why did your counsel rule that way?

Mr. GOULDEN. For the very reason that in the formation of a company a stock business is intended for the benefit of the stockholders and in a mutual company only for the policy holders.

Mr. AMES. Do you think it would be a good provision?

Mr. GOULDEN. Yes; but I do not like to interfere with people or companies doing both kinds of business.

Mr. AMES. It is one of the provisions of the Armstrong bill?

Mr. GOULDEN. Yes; it has at least that to commend the provision in your bill.

My next suggestion is found on page 36, with regard to the classification of directors. I have something to say upon this matter.

In this connection I refer you to page 36, section 34, where it provides that every mutual life company, organized or authorized to transact business in the District, shall classify its directors in a certain manner. The charters of various companies, and even the laws in some of the States under which some companies are organized, provide for a different classification of trustees. Is the District of Columbia going to demand that all the other States must change their statutes, and all the companies of other States their charter provision concerning elections, before they can be permitted to transact business within the District? This attempt to legislate not only for companies organized in the District, but concerning the details of the conduct and the management of corporations chartered by other

sovereign States and doing business in accordance with their laws, is an invasion of that comity which usually exists between the different jurisdictions which go to make up our Union. It is wrong in principle and will prove in practice most vexatious and impracticable. Let the District of Columbia set up a complete code for its own companies and frame it so sound and proper that its application to the companies of other States will swiftly follow through its adoption by the legislatures of such other States.

I want to add that it might be a serious hardship to the company I represent. We could not, I fear, comply with the law. We are a purely mutual company, recognizing the policy holders as the owners, and no proxy votes for trustees or directors can be cast. Each individual policy holder must cast his own ballot in person and not by proxy. Therefore many of the objections that have been raised that the presidents or others connected with the companies hold and cast the proxy votes does not apply to us.

Mr. AMES. Is not that another way of saying that your policy holders shall not be allowed to vote?

Mr. GOULDEN. Emphatically, no. Each policy holder is entitled to a vote for the first \$1 of premium paid, and another vote for every \$50 additional premium. For example, I pay in premiums to the company \$850 yearly; I am entitled to 17 votes, and I cast them each year for trustees who must be policy holders. In reply to the question of the gentleman from Massachusetts, Mr. Ames, I will say that in the history of the company the policy holders from all over the country at times have cast their ballots personally, electing new trustees different from those on the "regular" ticket. You can not capture or gain control of the company in any one year. There are 27 trustees elected each year for a period of three years. In 1885, when the policy holders voted in large numbers, thus electing an opposition ticket, Colonel Plympton came in as a trustee, Mr. Ames.

Mr. BIRDSALL. The ultimate power of control rests with the policy holders?

Mr. GOULDEN. Yes; absolutely, and can be exercised at any election, thus producing salutary results.

Mr. AMES. These people traveled from all over the country in order to cast their votes?

Mr. GOULDEN. Yes; that is true. Our annual elections are always well attended.

Mr. AMES. Is not that an unnecessary expense?

Mr. GOULDEN. No; not to those paying large premiums, and therefore deeply interested in the company's welfare. Suppose Colonel Plympton came to you as a policy holder, saying, I want you to go to Philadelphia and vote for trustees who will guard your interests, and gave reasons for this action. I think you would go. Its growth has been steady and along conservative lines, with a splendid record in management.

Mr. AMES. One of the provisions in the Armstrong bill—

Mr. GOULDEN. The Armstrong bill does not make the same provision.

Mr. AMES. No; but it provides for voting by proxies.

Mr. GOULDEN. Yes; it does not forbid the voting by policy holders, as your bill seems to do, so that your bill should be amended in this particular.

Mr. AMES. There are four ways of voting in this bill—by proxy, in person, by representative, and by mail.

Mr. GOULDEN. I think you should strike out the "by mail." I know how easy it is to gather up proxies from the policy holders.

Mr. AMES. That limits the proxies. One person could vote only 20 proxies?

Mr. GOULDEN. You can easily settle that by an amendment.

On page 42, the annual distribution of dividends, I have something to say on that matter.

Mr. AMES. We have amended that section.

Mr. GOULDEN. It dictates just exactly how the companies of Massachusetts, Connecticut, and Pennsylvania shall distribute their dividends, not only on the policies issued in the District of Columbia, but on "every policy issued on or after the 1st day of January." The law should require, if they so desire, an annual accounting, or even an annual distribution, but should leave the details of the methods to be settled by the companies. The law is not only vicious on the ground of interstate comity before referred to, but is wrong in dictating the methods in which dividends may be applied, when with annual declarations or apportionments detailed methods should be left to become a matter of contract between the company and the policy holders. It is significant that the Armstrong committee abandoned, as ill advised, provisions which are now contained in section 47 of the Ames bill.

I have only a word to say in closing. This committee has an important duty to perform; in fact, it is too important in my judgment for you to undertake to do it and report at this session of Congress. If I were on the committee I should say frankly that it ought to wait until the next session of Congress to submit a model bill. In the meantime go over the matter thoroughly and prepare a good, satisfactory code. Either do that or else simply enact a law for the benefit of the District of Columbia without any idea of influencing or benefiting the States. But I take it that the gentleman from Massachusetts was right in introducing a bill that was intended as a model for all the States. There is no question but that many of them would be glad to accept the examination and certificate of the District of Columbia if a good code was adopted and properly administered. I have implicit confidence in the ability and patriotism of the members of the Judiciary Committee to formulate such a bill.

Mr. AMES. Do you believe in the publication of the list of policy holders of a company?

Mr. GOULDEN. No.

Mr. AMES. That is one of the provisions of the Armstrong bill?

Mr. GOULDEN. I do not believe it would be necessary nor judicious.

Mr. AMES. Agreeing with your proposition was the reason that this bill provides for the opportunity of voting in four ways—in person, by proxy, by representative, and by mail—but it does not provide that there shall be a list published of the policy holders.

Mr. GOULDEN. I think you were right in omitting that. In the first place, it would be expensive, and I do not see what good it would accomplish.

Mr. AMES. Can you see how it would be harmful to the company?

Mr. GOULDEN. Yes. Because these lists would be open to the public generally, and if a policy holder received the documents and

trashy matters, with the annoyance of numerous visits of all sorts of canvassers that come to Members of Congress and others on account of their names being published, it would be a nuisance.

Mr. STERLING. It would not be any expense to the company if the list of policy holders was open to inspection, so that any policy holder could go to the office of the company and see it.

Mr. GOULDEN. I do not see any objection to that.

While the Armstrong committee has doubtless done good, it has gone too far in some things, and harm will result, in my opinion.

May I say that while we condemn all that is bad in life insurance, the good far outweighs all this. Yes, there was much to criticise, yet as insurance men we are justly proud of our American insurance companies. The people need have no fear on the score of solvency, of ability to pay every claim, and in the future, as in the past, they may have full and implicit confidence in this matter.

I thank you, gentlemen, for your kindness to me this morning.

**STATEMENT OF MR. DOUGLAS H. ROSE, ACTUARY, MARYLAND
LIFE INSURANCE, BALTIMORE, MD.**

Mr. ROSE. So much emphasis has been laid upon the idea that this bill is intended to be a model insurance law that all of its provisions and requirements become of importance whether applying by the provisions of the bill exclusively to local companies or not. If the bill is to be model one, the hope is that it will be copied by the legislatures of the various States, and the local provisions will then apply to the companies formed in those States and be binding upon them. In this view of the matter attention may be called briefly to the limitations upon the investments of insurance companies as defined in section 26 on page 31. Assuming that the proposed amendments submitted by Mr. Ames will be adopted, and so far as I have had the opportunity of examining them they seem on the whole to be distinct improvements, section 26 applies to the investment of the assets not merely the capital of domestic companies. Within the limits of safety insurance companies need as wide a field for investments as can well be granted, otherwise interest is cut down and the final cost of insurance increases to the policy holder. Paragraph 3 permits investments in the bonds or notes of any incorporated county, city, or town of the United States whose net indebtedness at the date of such investments does not exceed 5 per cent of the valuation of its property for the assessment of taxes. This limitation as to the net indebtedness will probably cut out a number of desirable and really safe securities.

Mr. AMES. Do you know what the indebtedness of Baltimore was?

Mr. ROSE. It depends upon how you count it. I think the gross indebtedness is about \$28,000,000. If you simply deduct the sinking fund, it is about \$28,000,000, or somewhere in the neighborhood of 7 per cent.

Mr. AMES. Can it be as much as that?

Mr. ROSE. I think so.

Mr. AMES. I understood it was a little over 2 per cent; but I may have been misinformed.

Mr. ROSE. Well, maybe I am misinformed, but at any rate that is a matter that is very easily verified by looking it up. My impression

was, that the assessed valuation of property in Baltimore City—you know Baltimore is not a rich city for the size of its territory—is only about \$400,000,000, I think.

The fifth paragraph speaks of first-mortgage bonds of any railroad company, etc. First-mortgage bonds of the best railroad companies are exceedingly difficult to obtain at any moderate price, having long since been absorbed and are now held at high figures. Some second-mortgage bonds are undoubtedly good, and it is quite possible that many second-mortgage bonds, even with the limitation as to dividends contained in the fifth paragraph, are better securities than certain first-mortgage bonds. The amendment suggested by Mr. Ames changes the word "capital" in the first sentence of section 26, and also in the first paragraph thereunder, to "assets." A similar change does not seem to have been made in other paragraphs of the section. Probably it is intended to carry the change throughout, and if so a number of other changes to conform therewith will have to be made. Indeed, in a number of particulars, the investment portion of the bill is not satisfactory as pointed out by Senator Bulkeley with regard to the ninth paragraph.

In the sixth paragraph industrial securities are mentioned, and if the investment regulations are to apply to all of the assets no permission has been anywhere given for investment in such securities.

Attention may also be called to the seventh paragraph where collateral loans are mentioned. This is practically prohibitive of such loans. They are frequently a very desirable form of investment for a temporary employment of funds, so that interest may be obtained upon them while awaiting permanent investment.

Mr. TIRRELL. Right there, I notice in section 26, in the first paragraph, it says that loans can be made on real estate, the market value of which must be double, at least, the market value at the date of the investment. How can you determine the market value? Would you put them up at auction to determine the value? How could you make a loan where you are personally responsible to such a calculation as that, where it shall not exceed one-half of the market value? How are you going to get at it?

Mr. ROSE. I do not know about the word "market," the one-half of the "market" value of the property—

Mr. AMES. Would it not be just as hard to give the value as the market value? That is the Massachusetts provision.

Mr. DRAKE. Would not the appraised value be the proper term?

Mr. TIRRELL. A test of the value may be given, but individuals differ as regards the value of property in the market.

Mr. DRAKE. If the words "market value" were replaced by the word "appraisement," that would settle it?

Mr. ROSE. I think the practice of companies is to have their appraisers make a valuation, and loan one-half of their value.

Mr. TIRRELL. It would not be a market value. Now, as to the result of that—I am on the board of investment of one of the large savings banks of Boston, and there it is left entirely optional under the law, and has to be with the board of investment, who, as a rule, are guided, though allowed to some extent otherwise, to go on their own judgment as to the value, and are then authorized under the law to make the loan 6 per cent upon that.

Mr. ROSE. A margin of 25 per cent can not be obtained upon first-class securities unless under most exceptional circumstances. On the best securities the smallest margin is obtainable. If the margin is made too large, as has been said, it will prohibit call loans altogether for prudent managers of life insurance companies, but allow them for those who are willing to take doubtful securities. This, of course, is the reverse of the intention of the law.

Attention may also be called to the fact that there is no permission to invest in the bonds of electric railways. Such securities are quite safe in many cases, and are very widely held.

Mr. AMES. Does the law discriminate in your State between electric railways, or street railways, and railroads?

Mr. ROSE. The laws are different in some respects.

Mr. AMES. Why should you object, then, to this provision?

Mr. ROSE. If it is the intention to include those I think it ought to be made perfectly plain.

This whole section evidently needs considerable revision, and what has been said is not intended to be exhaustive, rather to point out certain things which are obvious on even a casual examination, but which might possibly in some cases be overlooked in recasting it.

As has been said at the beginning, however, the restrictions on investments should be as moderate and limited as possible.

On page 42 is found section 47, relating to the annual distribution of dividends. One of the difficulties with reference to the legislation on this subject is the way in which a provision for strictly annual distribution of each year's profits bears upon small companies. The profits of any life insurance company must necessarily show fluctuations from year to year, but in a small company such fluctuations are often marked from the very necessity of the case. In a small company the general mortality experience spread over a number of years may be quite as favorable as in a large company, but for the very reason that the number of lives is limited the variations in the mortality experience from year to year are considerable. One year may be quite favorable, the next year unfavorable, or vice versa. Fluctuations from year to year are unavoidable. Obviously they can not possibly be controlled. Hence, if a strict distribution is to be made every year according to the profits of that year, the dividends would vary in a manner that would not only not be satisfactory to the policy holder, but would disturb and alarm them, often to the extent of discontinuing their insurance, which would be an injury to them and to the company.

Mr. AMES. An interruption: Would you provide for the contingency reserve, following the New York code terms?

Mr. ROSE. Yes.

Mr. AMES. With the small companies provided in this bill, 20 per cent thereof should be a contingent reserve. Don't you think 20 per centum would cover the fluctuations?

Mr. ROSE. Yes; it would cover the fluctuations, but as a practical matter the agents of other companies get at everything that is unfavorable to a company, and generally they will say about a small company, "It is a pretty good company after all, but it is small, you know;" and they may learn that they had a contingent reserve of so much this year, and last year they had a larger, and they will say, "See how the surplus has gone down."

Mr. AMES. Do you not think the basis of that trouble in New York—this corruption—was the large surplus they had?

Mr. ROSE. I am not speaking of the size of the surplus, but of the variation in the surplus.

Mr. AMES. That, taken in connection with their failure to make an annual distribution of dividends—

Mr. ROSE. I recognize the point of what you say there, but I think in this legislation the intent has been rather to favor the small companies as a matter of public policy—not merely because they are small; and I am merely pointing out what I think should be done, not saying what you should enact, but I am pointing out these suggestions as regards small companies perhaps in a way that you may not have thought of.

One year there might possibly be little or no dividend at all; another year there might be an abnormally large one. As has already been stated by the insurance commissioner of Maryland at the last session of the legislature of that State, a law was adopted forbidding the delaying of distribution of surplus under any policy longer than five years. This period, which has been the English one, gives an opportunity to secure something like an average result so far as mortality is concerned.

That law was introduced by a member of the legislature who said that beyond everything else he wanted to get at the deferred distribution business. But we have simply restricted it to no longer a period than five years.

Again, it is a question, to be considered at least, whether the result of making annual distribution of surplus mandatory might not have other unfavorable effects, especially upon new companies. It has been practically impossible for new companies really to earn much, if any, surplus for distribution to policy holders in the first few years of their existence. Now, if they have got to declare dividends annually, and if it is the intention, as seems to be the case, to force a comparison of dividends granted by the different companies, these small and new concerns will, necessarily at first, be at a considerable disadvantage in the comparison, and there may be the temptation under the circumstances by an inflation of values or some other questionable practice to figure out a surplus which really does not exist and divide it among policy holders for the purpose of making a show of earnings. I think the bearing of a number of restrictions in recent legislation, proposed or enacted, upon the small and new companies needs to be carefully considered. It may be that some of these restrictions not intended primarily for such companies at all will bear most heavily upon them.

Now, as to details, in the same section (47), it is required that any dividends should be applicable at any time to the payment of any premium upon the policy, or to the purchase of a paid-up addition thereto. This has been the practice of a number of companies, but not of all. The company with which I am connected has always allowed the policy holder having an annual distribution policy the privilege of deciding, when the first dividend became applicable, whether dividends should be used in future in part payment of premiums or in the purchase of paid-up additions. If the former course

were selected a change could not be subsequently made to the purchase of additions unless the company was satisfied as to the policy holder's continued good health. Likewise if the custom of taking paid-up additions were entered upon and afterwards departed from, it could not be resumed without satisfactory evidence of continued good health. The idea in this restriction, of course, is plain, that otherwise a policy holder whose health had become impaired and who could not therefore get insurance in the ordinary way would at once begin to use his dividends to buy paid-up additions. There would therefore be a selection against the company, and an unfavorable mortality experience would be had. That this is not merely theoretical may be borne out by the experience of companies which have allowed dividends to be used in the purchase of paid-up additions at any time. A gentleman connected with the actuarial department of one of the largest companies in the country told me that the experience of his company, at any rate, had been that the mortality on dividend additions was heavier than on the regular policies. It is to be remembered in connection with all such matters that in a life insurance company, as nearly all of them are now practically mutual companies, a privilege or benefit granted to one policy holder or class of policy holders has to be paid for by all. If the mortality experience of the company is rendered heavier by granting dividend additions to those who want them in the manner proposed, all the policy holders will have the cost of their insurance increased.

Page 47, section 53, requires that every policy which contains a reference to the application of the insured should have attached thereto a correct copy of the application and examination. The words "other than medical" are inserted in brackets followed by a question mark. It does not seem wise that a copy of the medical examination should accompany the policy. Some things of a confidential nature are often told by the applicant to the examiner, and the former would not himself wish to have such disclosures written down and attached to a policy which might be seen by a number of persons.

Then section 55, prescribing standard policies, is of doubtful wisdom and should, I think, be omitted altogether. If retained at all it would appear that they might be modified to advantage.

Mr. AMES. The amendment proposed takes care of that, does it not?

Mr. ROSE. I do not know that. The section prescribing standard policies is of doubtful wisdom, and I think it should be omitted altogether. If retained at all, it would appear that it might be modified to advantage.

There is a rivalry among reputable companies to make prompt payment of all legitimate death claims. The standard policy, however, promises to pay upon receipt of due proof of death. It would seem that it would be better to use some such words as are now customary, such as "upon receipt and approval by the company of satisfactory proof of the fact and cause of death," or something to that effect.

Mr. STERLING. Are you about through now, Mr. Rose?

Mr. ROSE. I can not say that I am. I have more here than I thought.

Mr. STERLING. If you have a considerable part of your manuscript left, would it suit you just as well to give it to the reporter and let him incorporate it in the hearings?

Mr. ROSE. It might do just as well. I have about 5 pages of manuscript left.

Mr. STERLING. I am perfectly willing that you should continue on the floor.

Mr. BIRDSALL. If he has any matter that he wants to call attention to not included in the manuscript, let him confine himself to that.

Mr. STERLING. Yes; let the manuscript go to the reporter.

Mr. ROSE. The only trouble about that is that I have not exactly followed the manuscript. However, I will present it as it is:

It has been customary with companies of late years to extend the privilege or benefit that has been introduced from competition of a grace of thirty days for payment of premiums. Some companies have even extended this privilege already without requiring any interest if the grace is availed of, but what reasonable claim can there be for grace without interest? It simply means that those who pay promptly are at a disadvantage compared with those who do not. Suppose a certain company has a renewal premium income of \$6,000,000 and suppose that one-half the policy holders took advantage of the thirty days' grace provision. This would mean a loss to the company, compared with prompt payment, of one month's interest each year on \$3,000,000. At $4\frac{1}{2}$ per cent, this would amount to \$11,250. Of course practically without any grace provision many premiums do not ordinarily reach the home office promptly, being in the hands of agents for collection and subject to unavoidable delays, but the point is that all such privileges extended are paid for by those who do not avail themselves of them, as well as those who do, and as every privilege costs something the cost of the insurance by the lowering of the dividend is necessarily increased to all. Each little benefit may make but a small difference, but the sum total must make an appreciable difference.

If it became generally known that policy holders have thirty days' grace for the payment of their premiums without interest, a considerable number of them at least would avail themselves of it. I was recently told by an agent of a company that had such a provision in its policies that several of the policy holders of that company did not discover the fact until after the Baltimore fire, when it was brought to their attention by the agent himself. Of course all the companies were extending for the time being special privileges to policy holders who had suffered by that fire. The agent went on to say that those policy holders who learned of the grace provision in their policies without interest, though abundantly able to pay promptly, had never since failed to take advantage of the thirty-day privilege. As has been shown, if this happened generally in any company there would be an appreciable loss in interest every year, a loss which would be, to a considerable extent, a charge upon those who were prompt for the benefit of those who were not.

The matter of adverse selection from the privilege of applying dividends at any time to the purchase of insurance has already been mentioned.

The provision as to loans in the standard policies as amended allows a margin of 20 per cent of the reserve. As no direct cash values appear to be allowed under the policies, the indirect method of taking a loan would have to be availed of in order to obtain a cash

value. The 20 per cent margin in such a case would represent the surrender charge. Now, it would seem fairer and wiser to make a larger charge for a withdrawal happening in the early years of a policy than for one occurring later, as obviously more detriment is done to the company by the withdrawal of the more recently examined risk, which is usually the younger risk, than by the withdrawal of one who had already been a number of years in the company. Perhaps it may be well here to emphasize the fact that anything given in excess of what is justly due to a withdrawing policy holder must necessarily be taken from those who continue.

There are different opinions about the extended insurance feature. The company with which I am connected has never looked with much favor upon it, believing that unless very carefully guarded it will result in a selection against the company, and consequently increased mortality; that is to say, those policy holders who withdraw, and for any reason feel that death is likely to occur in a few years, would naturally choose the extended insurance privilege rather than paid-up insurance for a smaller amount. We have never incorporated the extended insurance feature in endowment policies. Apart from everything else, such policies are often granted by the company when a term policy would not be granted, because the risk is not thought one that the company would be justified in taking upon a low premium plan like the term plan. It would be possible for an applicant to accept an endowment policy, and then in two or three years withdraw and take the extended insurance feature, thereby securing a term policy. I have been informed that this has actually happened. It is true that at least three years' premiums would have to be paid upon the endowment plan before this could be done if the amended policy form is used, but I do not think that the companies would be willing to grant insurance in many cases on the endowment form if they knew in advance that this option would be exercised at the end of a few years.

We have never believed in dividends on term policies, nor in renewable term insurance, though there is a difference of opinion upon this question. The objection to renewable term insurance is the objection again of liability under such a plan to adverse selection, and consequent increased mortality. It is said to be a matter of actual experience that when such policies have been issued the mortality after renewal has often run much beyond the American Experience Table of Mortality, the table ordinarily used in this country, and recognized in the present bill as the basis for reserve calculations. A number of other details might be mentioned if there were time.

To return briefly to the question of standard policies, it does not seem on general principles that they are needed. Mr. Dawson stated in his address to this committee that he, during the Armstrong investigation, had assembled policies from a number of companies and found them much like. He said nothing about finding anything of importance that was misleading in the language of these policies. I do not believe that such is the case in any essential particular in regard to the policies issued by the regular life insurance companies. Perhaps it has been true of policies issued by some of the assessment companies. If the policies that Mr. Dawson assembled were much alike, and were not misleading, and they could not be much alike if they were not all misleading, there does not seem to be any great

necessity for prescribing a standard form. Occasionally applicants desire some special policy contract. If you prescribe a rigid form such a contract can not be written.

We had an instance in our own experience some time ago. Certain property was to go to a woman provided she survived another woman some 80 years of age. It was desired to obtain a loan upon the security of this property, and to protect the lender we were asked to issue a policy of insurance upon the younger woman's life, payable only in the event of her death prior to that of the elder woman. It is not a usual case, but there ought to be some way of obtaining such insurance protection when it is needed. We issued the policy. Now, it is true that under the present bill if application is made to the insurance commissioner and all the other companies are duly summoned, and so on, extra forms can be made standard, but all this involves considerable time and trouble. In the instance referred to it might have defeated the purpose for which the policy was asked for altogether on account of taking too much time. Again, we have been in the habit, in some instances, when a risk was deemed on the whole not unfavorable for a limited period, but was thought not to have the promise of long life, of accepting such a risk on what is known as the 'semiendowment' plan.

This is similar to an endowment with the exception that only one-half of the face of the policy is payable at maturity instead of the whole. The premium on such a policy is considerably less than on the endowment, and the applicant is thus saved a larger outlay in premium, and the risk is carried for the time for which it is considered an average one. Such policies would also be shut out. Then in regard to the minor points, some of which I have mentioned a short time since, about which the companies differ to some extent, but which seem to involve adverse selection and consequently would be of disadvantage to the whole body of policy holders.

It may be, as was suggested by Mr. Gore, that one company is better equipped by the training of its agents and experience in that particular line to minimize any unfavorable results from incorporating such a privilege or benefit, while with others it would perhaps have quite different results. Just as in the case of individuals, companies have, to a certain extent, distinct characteristics, and probably the best results are obtained because they have. One company may handle one thing better than another, and vice versa, and hence such details should be left to their judgment. It has been pointed out several times to the committee that standard policies kill all initiative, put no premium on any inventive skill in the construction of any forms of contract or any benefits, and are a distinct check to progress. Very often a new company seeks to obtain business in the face of competition of the older and stronger companies by having some special form of policy which it thinks is especially desirable. The new company, which it is desired to encourage, would have another difficulty put in its path by restricting it to exactly the same forms of contract as those issued by the largest and strongest and best-known companies. There doubtless should be some supervision as to policy forms. Some new companies are now offering too much in their policy contracts, but this can be cured to a considerable extent by insisting on an adequate reserve to cover all benefits promised. If the intention be to reduce all the companies to the same dead level

of uniformity in every particular, it may be possible for a policy holder by a little care to determine exactly which one furnishes the cheapest insurance, but if that principle were followed by all applicants it might result in all the business eventually going to two or three companies, or even one, which would then have the monopoly of the business, which of course is not desirable nor intended.

Recent events may have shown that the existing laws are not sufficient to meet existing conditions, but it is a question that needs to be very thoughtfully considered whether restrictive legislation, while reaching perhaps the particular evils now in mind, may not lead to others possibly worse. Modern medical practitioners, more capable probably than ever of making a correct diagnosis, hesitate more and more about the use of drugs, except when absolutely necessary. They fear that their diagnosis may not be correct, and even if it is, that heavy doses of medicine while reaching the particular trouble may eventually have other effects that would be quite as unfavorable. It may be the same with regard to life-insurance legislation. At any rate the greater the number of details proposed for a law, the greater wisdom required to foresee what the effects of all those details will eventually be.

Further, every benefit insisted upon which may in the actual experience be enjoyed by only a portion of the policy holders costs something, and this cost is borne by all in the shape of a decreased dividend. Even additional statistical information called for in the publicity provisions requires extra labor and therefore extra expense, which is borne by the policy holders, for in most companies the policy holders are, to a greater or less extent, partners in the concern. The increased expense of getting new business and the continued decline in the rate of interest obtained upon invested funds have played the largest part in decreasing dividends, and hence increasing the cost of insurance to the policy holders. They have not been the only factors, however. The increased liberality of the policy contracts have also diminished profits. Perhaps in the old days the companies gave too small cash values upon surrender of the insurance, but the surrender charge exacted was a source of profit to be divided among the persistent policy holders in dividends. This profit is now largely cut off by the voluntary increase of such cash values by the companies themselves.

It is a common remark that in most lines of mercantile activity that there has been such a decrease of profits that on each transaction that it is necessary to do twice as much business now as was formerly required to make the same aggregate profit. While the same thing is true of life insurance, every new policy adds a new partner to the concern, so to speak, who is to receive a share in the aggregate profits. The number of partners increases with the increase in the volume of business.

These things are mentioned because it seems that they should not be overlooked in any attempted performance of the tremendously difficult task of enacting any detailed legislation for such a complex, technical, and far-reaching business as life insurance has grown to be.

Mr. STERLING. I suggest that Mr. Curry now proceed for fifteen minutes.

Mr. DRAKE. Permit me, Mr. Chairman, to explain Mr. Curry's

position. He is the examiner of the insurance department of the District. He is also a member of the Washington bar, and, in connection with the corporation counsel, he has had the legal features of the department to attend to. He is perfectly familiar with the details of the topic about which he will speak.

STATEMENT OF MR. DANIEL CURRY, EXAMINER, DEPARTMENT OF INSURANCE, WASHINGTON, D. C.

Mr. CURRY. Mr. Chairman and gentlemen, the subject I wish to be heard on is that of assessment life insurance in the District of Columbia, but more especially that portion of it which relates to the industrial feature. Companies of that kind issue only very small policies. The average, I think, is about \$30, and we have designated them and they are known elsewhere as sick, accident, and death benefit associations. In most of the jurisdictions they are cooperative, but here they are not.

It is a rather unusual condition of affairs. When the department was created in 1902 it found six or eight or nine of these companies doing business, and there was very little law to justify them, and the law under which they claimed to operate was what is called the assessment law, and the provisions of that law are found in the Code, section 653, for which we have an amendment. There have been, by the way, from eight to a dozen amendments made and submitted, and the present section requires only that these companies shall pay the full amount of their certificates and to show that one assessment on their membership is sufficient to pay their largest policies issued by them. It does not require them to have any capital stock, deposit, or reserve. There is no requirement as to that, so that they incorporate with any amount of capital stock that they see fit. They do, however, have a small capital stock to get control of the business. They are rather close corporations, and each is owned by a few persons. They have incorporated, I think, with from \$900 to \$20,000. There are 14 of them now incorporated in the District of Columbia.

Mr. TIRRELL. They have to pay the capital in?

Mr. CURRY. Yes, sir. There is another section of the code which requires that all companies or associations shall have their capital, as required by their certificates of incorporation or their by-laws, paid up in cash, and the Department has always insisted on having that done. The great difficulty experienced with these sick, accident, and death benefit associations has been that they can incorporate and do business on practically nothing.

Up to within a few months ago, when the incorporation act was changed—they are now charged a minimum of \$25 for a charter from the recorder of deeds—they could start a company with \$2, and they did not require any working capital, either.

Their mode of operation is to get agents to go out and get business, and their pay usually is the first fifteen collections they make from the people. They collect weekly. All these companies collect weekly except one, and it collects by the month. They provide no security for the people except what they see fit to have, and what they call a reserve fund, but it is not scientific, and it is not required by law. Any amount is sufficient to meet what provisions of law we have.

Mr. TIRRELL. I understood day before yesterday by the statements made that for every dollar in these companies in the District of Columbia that was collected, 75 cents went to pay the expenses of the company. Is that so?

Mr. CURRY. Yes, sir; and that condition is the result of the law and the nature of the business, because anybody can start a company. We have fourteen companies of our own here and four from surrounding States.

This kind of business is peculiar to the District of Columbia and only a few contiguous States. I would suggest here, if this bill becomes a law, that it need not be incorporated in the Ames bill, because nobody would want to copy this provision, because nobody else has the same conditions as prevail here.

Mr. STERLING. You say the agents are paid out of the premiums which they collect?

Mr. CURRY. Mostly. Sometimes they pay a small salary and commission.

Mr. STERLING. And they receive about fifteen of the first premiums?

Mr. CURRY. Yes; ten or twelve or fifteen of the first weekly premiums.

Mr. STERLING. You say the companies are owned by the people who incorporate them?

Mr. CURRY. Yes, sir.

Mr. STERLING. How are they compensated for their services? Do they get salaries?

Mr. CURRY. They get salaries; and, strange to say, their annual reports never show any dividends, except in one instance. I have noticed one here this last year, which shows a dividend of 100 per cent on the capital stock.

Mr. FLOWER. Is it any of the business of the department here, or insurance officers, whether any concerns here earn dividends and declare them or not?

Mr. CURRY. We have no control over that.

Mr. FLOWER. As to any stock company, either personally or officially, is it the business of the department of insurance whether they declare dividends or not?

Mr. CURRY. No, sir.

Mr. TIRRELL. If the company is incorporated, is it not the business of the public to know that that corporation shall conduct its business in such a way that the public receives a legitimate benefit from it?

Mr. CURRY. Yes, sir; and even the imperfect insurance law that we have provides for statements to be rendered to the department of insurance. But some of these companies have refused to render statements for the past two years, and when the department got after them for their failure they mandamused the department, and the matter is now pending in the court of appeals.

Mr. AMES. Your insurance law for the District of Columbia is then lacking in certain necessary provisions?

Mr. CURRY. It is lacking in a great number of respects, and that is the reason why we are advocating this bill.

Mr. STERLING. These companies report, do they not, to the insurance department, or to the superintendent of insurance?

Mr. CURRY. Some refuse to report.

Mr. STERLING. Do those that do report, report how much they have collected from the policy holders, and how much they have paid back?

Mr. CURRY. I have the figures on that here.

Mr. EVANS. Can you tell us whether section 653 of the District Code does or does not provide for the full report of assessment insurance companies?

Mr. CURRY. It does.

Mr. EVANS. Do not these protesting companies file with the department a report in strict accordance with section 653?

Mr. CURRY. For what time?

Mr. EVANS. For the year 1904?

Mr. CURRY. No, sir. That is the contention of the department. That is the case that is being litigated now. They did not file the annual financial statement.

Mr. EVANS. Did they not file a report strictly consistent with section 653? Did they not do it?

Mr. CURRY. They probably did; but they refused and still refuse to file, and for the last two years have refused to file, the annual statement showing the conduct of their business, required by other sections of the code, and the section you [addressing Mr. Evans] refer to, section 653 of the code, gives no information for the public. They simply say they pay the full amount of policies.

Mr. TIRRELL. I do not think there ought to be a controversy here about that.

Mr. STERLING. No; I think not. We are not so much interested in what these individual companies have done. What we are interested in is the principle on which this business is run.

Mr. CURRY. The present condition of affairs is brought about by the unusual number of companies and the ease with which they can incorporate, and any of these agents can go out now and with \$25 start a company, and the people who are their policy holders know chiefly the agents. Those agents will say, "If anything is going to happen to the company I will get you out of it and get you into a good company." The people have to be in the companies a certain number of weeks before they get any benefits at all, and then when they do get benefits they do not at first get full benefits, but get only half benefits, and so, by taking these poor people around from one company to another, it results in a great damage being done them.

Mr. STERLING. Let me ask you a question: You say you have the figures there showing the amount of money collected from the policy holders that goes back to the policy holders in the way of losses?

Mr. CURRY. Yes, sir.

Mr. STERLING. You ascertained those figures from the reports made?

Mr. CURRY. Yes, sir; sworn reports.

Mr. STERLING. I do not know whether you were here the other day when Senator Bulkeley was here, but he submitted a copy of a report made by his company for 1904. Did you ever examine that report, or any annual report of that size?

Mr. CURRY. Which report is that?

Mr. STERLING. The Aetna Life Insurance Company, of Hartford.

Mr. CURRY. I have seen that report, but it has no relation to this kind of a company.

Mr. STERLING. I know; but can you take this report and ascertain from it how much this company collected from the policy holders, and how much it paid back in a particular year to the policy holders in the way of death losses, endowments, and annuities?

Mr. CURRY. Yes, sir. It is all given in the report.

Now, with regard to the amounts, here are six companies. It is not necessary to read the names of the companies, because one of the gentlemen yesterday refused to tell the name of his company—I do not know for what reason. The first company collected \$27,073, and paid back to the policy holders \$3,132, and paid for expenses \$26,318.

Mr. STERLING. What per cent is that of the amount collected?

Mr. CURRY. Paid to policy holders $11\frac{1}{2}$ per cent. The rest went to expenses. The next company collected \$27,052, and paid back \$10,866.

Mr. STERLING. What percentage is that, Mr. Curry?

Mr. CURRY. Forty per cent; 60 per cent went for expenses. I will just give you the percentages. The next company paid back 23 per cent to the policy holders. The next one paid back 22 per cent, and the next 17 per cent, and the next 24 per cent.

Now, the reason for that is, gentlemen, apparent, from what an outsider can learn of this business and from their sworn statements furnished to the department. It is the temporary nature of the insurance that these people have; very small amounts, and they do not stay in the company very long, and they are dragged around from one company to another. When new companies are formed they go into the new companies. Sometimes a company will have to buy the same business more than once in a year. That is what runs up the expenses. Then it costs them a great deal of money to collect this money, because they collect it in small amounts. They call on the policy holders by the week, and collect from 5 cents to 25 cents, and so on.

Mr. STERLING. How do these percentages compare with the percentages that the old-line insurance companies pay back to their policy holders?

Mr. CURRY. I suppose this is probably not more than half as much.

Mr. EVANS. How about the conduct of the department toward the old-line companies? Is not the only old-line company doing business here paying back about 25 per cent?

Mr. CAVE. Mr. Chairman, may I be allowed to ask one question?

Mr. STERLING. Yes.

Mr. CAVE. I ask what percentage was paid of the gross receipts by the largest industrial company doing business in this District, or in the United States, for the last year, or any number of years?

Mr. CURRY. You mean the companies doing business that report to the department—sick, accident, and death?

Mr. CAVE. No; industrial companies.

Mr. CURRY. I have not the percentages.

Mr. CAVE. I can answer the question. It is about 29 per cent, the largest industrial company in the country. It compares favorably with the aggregate of these.

Mr. STERLING. Now, just to get into the record here a comparison of the percentages paid back to the policy holders by these industrial institutions and those paid back to the policy holders in old-line life

insurance companies, I have here a statement showing that the *Ætna Life Company*, from the time of its organization down to 1896, collected \$169,000,000, and paid back \$60,000,000, being 35.59 per cent. The *Equitable* of New York is another illustration. It paid back 26.67 per cent. The *New York Life* paid back 27.73 per cent. The *Phoenix Mutual*, of Connecticut, paid back 36.77 per cent. Is it not a matter of fact that very little more is paid back by these old line companies of the money actually collected from the policy holders and the income from their assets—but very little more—than is paid back by the industrial institutions?

Mr. CURRY. The average varies between 22 and 23 per cent.

Mr. STERLING. I am not eliciting this as a justification of the industrial insurance. My idea is that they are all very expensive propositions. I just wanted to get into the record a comparison of the two kinds of insurance with reference to the amount of money that came back to the people who pay their money into the treasury of the companies.

Mr. DRAKE. The two systems are so much at variance that you can not get a percentage by way of comparison that will be of any value. For example, the mortality in the industrial companies is 100 per cent more than under the ordinary system, and ordinary reserve is a legal requirement under the law. You did not go far enough in that statement in simply taking returns to policy holders. The reserve should be taken into consideration.

Mr. STERLING. The amount to be considered should be the amount returned to the policy holders, and if these policy holders do not get a substantial part of all they pay in, exclusive of the actual and liberal running expenses of the company—if they do not get back all that they pay in, except the expenses necessary to carry on the business, then the policy holder is the man that suffers. Is not that true, Mr. Drake?

Mr. DRAKE. Yes, sir; except that in the old-line companies you must remember the reserve; you must bear in mind the reserve, which is equivalent to deposits in a bank.

Mr. STERLING. Yes, but the difference is this, that in the industrial institutions it all disappears somewhere.

Mr. DRAKE. Not necessarily in the old-line companies; all of them carry a reserve.

Mr. STERLING. In the old-line companies what has not been paid back to the policy holder is held in reserve; but will the policy holder ever get it?

Mr. DRAKE. He will ultimately get it.

Mr. STERLING. Let me call your attention to the statement made by a gentleman the other day, Mr. Scovel, who said that the *New York Life Insurance Company*—I think that was the company he used as an illustration—had at the present time about \$400,000,000 of assets, and if it did not write another line of insurance for the next ten years, with the premiums it collected and the interest on its securities and rents on its real estate, it would increase in ten years to \$1,000,000,000, and at the same time pay all losses as they accrued in the next ten years. That is what Mr. Scovel says, so that where it is necessary now for these people to go on paying premiums in there when this fund will continue to accumulate, regardless of the paying in of premiums

in the future? It will grow all the time, and in the end, if they should cease to write all business—in the end there would be millions and millions of dollars after every policy is paid.

Mr. DRAKE. There could not be a dollar. The American table of mortality terminates its policies at age 96, and the combined experience at 100. An old-line insurance policy issued on the legal-reserve plan, on the life plan, is merely an endowment. Now, the theory is that we start out with a hundred thousand healthy persons at age 10, and the average net premium age 35 on the basis of a $3\frac{1}{2}$ of American mortality would be \$19.91, and you would have to charge that man to the end, if he lived to 96, which would be sixty-one years. At the beginning of the ninety-fifth year there would be 3 out of 100,000 on the American experience table, having started at 10, who would be surviving, and the \$19.91, together with the interest less the current mortality, would exactly equal the face of the policy; the theory being that every man who had passed out had received his insurance at actual current cost and received back the all-over payments with interest accretions. The two systems are entirely at variance. The assessment insurance system that these companies are operating under carry no reserve.

Mr. STERLING. Is not that wholly immaterial in considering which is the most valuable to the man who holds the policy? What is the difference how he gets his benefit, whether it is on account of the reserve being there in the one case, and in the other case on account of the assessment?

Mr. CURRY. He gets it in each case.

Mr. STERLING. You take a dozen of the old line life insurance companies of the United States, and is it not a fact that their accumulations at the present time are sufficient, so that if they should seek to write policies, to enable the income on their assets in the way of rents and interest to more than pay their policies that fall due by death?

Mr. DRAKE. Yes; on the theory that they should be returned. No dividend is calculated on lapsed policies. It is calculated on the theory that the man would be as true to his company as it is to him.

Mr. STERLING. Assuming that those policies run to maturity and there are no lapses at all, if that is not sufficient to pay out these policies, then all the premiums that are paid in right along are in excess of what is necessary to make good the obligations of these companies? Is not that true?

Mr. DRAKE. I do not look upon it in that way, sir.

Mr. STERLING. It is a fact, as I understand it, sir, and it may be true of other companies; but there is one known as the Pennsylvania Insurance Company—

Mr. DRAKE. The Pennsylvania Mutual?

Mr. STERLING. No; it is a Pennsylvania Company for the Insuring of Lives and Paying of Annuities. I think that is the title of it.

Mr. DRAKE. Is it a recently organized company?

Mr. STERLING. No; it is an old company and has not written any policies for years; has not done any business for years. At the present time its assets are \$12,800,000. Its outstanding policies are \$157,000. Now, that company, if it pursues its present policy of not writing any more insurance, will go on, and as these policy holders die they will pay out this \$157,000, leaving more than \$12,000,000 assets at the end of that time. Is it not a fact, under those condi-

tions, that that company has collected infinitely more money than was necessary?

Mr. DRAKE. The fact that it has not disbursed its excessive cost currently is the reason for that condition.

Mr. STERLING. If it has got \$12,000,000 it has charged too high on premiums?

Mr. DRAKE. Yes; it has not treated its policy holders properly; that is, on the mutual basis.

Mr. CURRY. The bill recommended by the department of insurance to cure these evils that are complained of was the bill H. R. 18894. A bill was afterwards introduced by Mr. Smith that was not approved by the department, on May 10. That bill is practically the same as the bill recommended by the department, with uniform policies left out. The idea of uniform policies did not originate with the department, but was suggested by the subcommittee. The department has not very much faith in such a thing.

The bill H. R. 19154 is approved by the department with some very slight changes, because in changing the bill they practically take all of the department's bill, and half way down page 5 they put in a part of the section that is carried in another page. We struck out three lines, from the period in line 15, page 5, and line 16 and line 17.

On line 18, after the word "all," we put in the words "classes of," and in line 19, after the word "shall," we put in the word "respectively," making it read, "all classes of companies or associations named herein doing business in the District of Columbia shall respectively issue uniform policies or certificates, the form of which shall, before such issue, be approved by the superintendent of insurance, after a hearing to be fixed by him on notice to every assessment insurance company or association mentioned herein, either on his motion or on application of a majority of the companies or associations interested," etc.

On the next page, by mistake, as I understand from the gentlemen who compiled this bill, they left out the provision for the companies to be licensed by the District of Columbia, and they say that that is satisfactory to them. And in line 18 they left out the words, after "herein," "or whenever its liabilities exceed its assets."

Mr. CAVE. I wish to make a correction there. I have had a good deal to do with the preparation of that amendment. That is the first I have heard that it was not approved by all of them. That bill was approved by all of them.

Mr. CURRY. Not all of them. We make it read:

Whenever the market value of the bonds so deposited as aforesaid by any assessment company or association mentioned in this section shall fall below the amount required herein, or whenever its liabilities exceed its assets, it shall be the duty of the superintendent of insurance to suspend the license of said assessment company or association, and unless the deficit be made good within thirty days thereafter he shall revoke its license.

It was sixty days, and we have stricken out "sixty" and made it "thirty days," to conform with another provision over here on page 7, which says:

Every such assessment company and association shall be required, when necessary to pay its death and indemnity claims, to levy extra assessments on its members; and any such assessment company or association that fails for a period of thirty days after notice from the superintendent of insurance to comply with any provision of this section, or fails to pay within thirty days a final judgment

or decree rendered against it by any court of competent jurisdiction, shall have its license to transact business revoked; and such judgment or decree may be satisfied from any deposit hereinbefore provided to the credit of defendant company or association on petition to be filed by the party or parties in whose favor said judgment or decree may be.

We strike out of line 3 the words, "in addition to regular dues" and insert, after the word "levy," the words "extra assessments," so that the lines will read, "to levy extra assessments on its members," instead of "assessments in addition to regular dues."

These companies do not have dues. They sometimes prefer to call them dues rather than assessments, but they are assessments. The Department approves this bill as it is read.

Mr. EVANS. Does that provision, as approved by the department, compel the companies to pay final judgment in thirty days? Does the department of insurance insist upon the companies paying for final judgment within thirty days?

Mr. CURRY. Yes, sir.

Mr. EVANS. Under penalty of a revocation of its license?

Mr. CURRY. I think so.

Mr. EVANS. Can you tell us why the company should put up a reserve fund in the registry office of the supreme court—a reserve fund—and then why the additional requirement should be made that they should forfeit their charter and go out of business if they do not pay a final judgment or decree within thirty days? That is, Why should they be obliged to get it coming and going?

Mr. CURRY. One reason is that a company may go out of business.

Mr. EVANS. That is where the deposit in the Treasury should come in.

Mr. CURRY. That is one of the benefits of the deposit. There are other good benefits coming from it.

Mr. EVANS. How about going out of business?

Mr. CURRY. Congress delegates to the department the power—

Mr. EVANS. Why is that proviso placed in the bill? Why do you have a double-barreled provision of that kind? They put up \$10,000, and then you provide they must go out of business. I do not understand it. You will excuse me, Mr. Chairman, for interrupting.

Mr. CURRY. The bill provides that any final judgment can be paid out of this deposit.

Mr. EVANS. But it provides also that you shall put us out of business if we do not pay it.

Mr. CAVE. It provides that you will have thirty days to make good the deficit.

Mr. STERLING. That is the sense of the bill, is it not?

Mr. CAVE. Yes, sir.

Mr. EVANS. That would be all right, but the additional requirement is that if we do not meet these judgments the superintendent of insurance shall cancel the charter of the company.

Mr. HENRY E. DAVIS. The short of it is, that if the company goes out of business there is nothing to fall back upon. The very language of the bill is that this deposit shall be for the purpose of guaranteeing—

Mr. EVANS. I am not talking about the deposit.

Mr. CURRY. A corporation that will not pay a final judgment has no right to do business or have the confidence of the public.

Mr. EVANS. We are required to pay \$10,000 in some way or other to comply with the demand that we shall do certain things. Then in addition to that you have another requirement there, that if the company does not pay within thirty days the final judgment or decree of the court it shall be estopped from doing business. You have not answered my question at all. That is a different thing entirely that you speak of.

Mr. STERLING. Suppose there is a judgment of \$1,000, Doctor, and you draw on this deposit of \$10,000. You have thirty days in which to replace it and make your deposit good?

Mr. EVANS. That is also in the bill, Judge, that you shall make this judgment good within thirty days or be put out of business. That is independent of the matter I referred to before. That is in addition to the provision that we must make it good or go out of business. There is an additional requirement that every company that fails to pay a final judgment against it in thirty days shall have its salary revoked.

Mr. STERLING. Is there anything further, Mr. Curry?

Mr. CURRY. No, sir.

Mr. DE ARMOND. I would like to ask you whether you know that a good many of the same persons are in several of these companies as incorporators—whether it is something of an industry to get up these companies?

Mr. CURRY. To a small extent, in one or two instances. I know where a gentleman bought one or two shares in another company and they refused to recognize him. They seem to be afraid of each other.

Mr. DE ARMOND. They could start another one of them and it would not, of course, be much of a temptation, then, to interfere with another one?

Mr. CURRY. No, sir.

Mr. COCKRELL. I understood Mr. Curry to say that there were fourteen of these companies in all; that each one was owned by a few people, and controlled by a small group. Do you want to correct that? Is that your understanding?

Mr. CURRY. So far as my experience and examination go, I say only a few people do own these companies.

Mr. COCKRELL. There is no exception, so far as you know?

Mr. CURRY. Not that I know of. It is not a kind of concern that people buy stock in, the kind that are in this industrial assessment business.

Mr. DE ARMOND. In other words, they do not buy stock when they can get it for nothing.

Mr. EVANS. Have you found any excessive salaries beyond a fair rate of remuneration, or any excessive profits in these companies? Or have you found any evidence that they could not promptly meet all obligations as they accrue?

Mr. CURRY. I think that is best answered by showing the expense.

Mr. EVANS. That is not an answer at all. That would be an acquiescence in my statement.

Mr. DE ARMOND. You (addressing Mr. Evans) should give the witness a chance.

Mr. CURRY. Some of the sworn statements of the companies will show that the salaries paid are nearly 100 per cent of the amount paid to all the policy holders.

MR. EVANS. Are they excessive? In other words, what is the largest salary paid to any officer in the city?

MR. CURRY. You know very well that the reports do not give what the individual insurance officials get. They give it in gross—

MR. EVANS. Subject to examination.

MR. DE ARMOND. They do not tell what the particular individual gets?

MR. CURRY. No, sir. Not even the old-line life or any insurance companies do that. That is one of the contentions of some of the departments—to get them to do it—but they will not do it.

MR. EVANS. Have you ever known of a man getting more than \$2,000 a year?

MR. CURRY. Not to my actual knowledge. Of course I have heard that some get that much and more in these companies. You will notice also that these companies go on for years and years, and when started ten years ago they probably had \$1,000 and have not any more than that yet. It does not seem to make any difference how much they take in; they have the same at the end of the year.

MR. EVANS. How many years ago?

MR. CURRY. Say, ten years ago. I refer to some of them.

MR. EVANS. You say that the reports show that for many years past they have not accumulated anything?

MR. CURRY. From year to year they have not accumulated any more.

MR. EVANS. You can show that?

MR. CURRY. Yes.

MR. EVANS. How many companies show that?

MR. CURRY. I will read from one. I will read from your company.

MR. EVANS. Yes.

MR. DE ARMOND. What is that called?

MR. CURRY. The Royal Life Insurance Company of Washington, D. C. "Amount of ledger assets December 31, 1902, \$829.75."

MR. EVANS. Now, what was it in 1904?

MR. CURRY. "Paid by members in that year, \$9,065.05; other sources, \$500." That was borrowed money.

MR. EVANS. No, sir; that was contributed.

MR. CURRY. Beg pardon. "Total paid to members, \$1,542." The total expense for that year—it does not show any dividends—was \$9,740.77; balance, \$654. On December 31, 1903, its assets were depleted about 50 per cent.

MR. EVANS. Did it show any salaries?

MR. CURRY. Six hundred and eighteen dollars to officers. "Commissions and fees retained and paid or allowed to agents on account of fees, etc., \$5,011.64." That is 50 per cent of the entire receipts, including the \$500 contributed. Then the "amount paid as allowances to managers and agents, not paid by commissions, \$1,358." The others are small amounts.

MR. EVANS. Have you shown that for the past year—1904 or 1905?

MR. CURRY. You did not render any financial statement for 1904 and 1905.

MR. EVANS. You are privileged to examine our accounts at any time, are you not?

MR. CURRY. If you are not required to have a license, as you claim, and you do not have to pay any taxes, I do not see where we would

have a right to examine you, and you claimed that; and you are in court now fighting the department because the department wants to make you comply with its construction of the code.

MR. DE ARMOND. If I understood your figures, this Royal Life Insurance Company paid out in the year you gave us about \$1,500 to the policy holders and charged something over \$9,000 for doing it—if I got the figures right?

MR. CURRY. That is what the people paid in premiums.

MR. EVANS. It is a very young company.

MR. DRAKE. Give the date of its organization.

MR. CURRY. I have not the date.

MR. EVANS. It was organized in the District in 1901. It had a small organization prior to that, and that was the second year of its organization under the laws of the District of Columbia.

MR. DE ARMOND. I understand they collected \$9,000 and paid out \$1,500. It does not require the experience of age to know how to absorb all that it gets in. [Laughter.]

MR. STERLING. If there is anything further along that line that you would like to put into the record you can prepare to answer after recess.

MR. CURRY. Yes; I want to submit this bill that the department approves—the last bill introduced.

Thereupon, at 1 o'clock p. m., recess was taken until 2 o'clock p. m.

Substitute for H. R. 18894, with amendments proposed by the Department of Insurance of the District of Columbia.

A BILL to amend section six hundred and fifty-three of the Code of Law for the District of Columbia, relative to assessment life insurance companies or associations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Code of Law for the District of Columbia be, and the same is hereby, amended by striking out section six hundred and fifty-three thereof and substituting in lieu thereof the following:

SEC. 653. *Assessment life insurance companies or associations, sick, accident, and death benefit assessment companies or associations, also sick and accident assessment companies or associations.*—All assessment life insurance companies or associations, sick, accident, and death benefit assessment companies or associations, also sick and accident assessment companies or associations set forth in this section, shall be incorporated before engaging in business in the District of Columbia; and such companies may be incorporated under the provision of subchapter four of chapter eighteen of the Code of Law for said District, provided that every such company shall have cash assets of not less than one thousand dollars, besides the bonds to be deposited in the registry of the supreme court of the District of Columbia, as hereinafter provided; and before the articles of incorporation of any such company or association are admitted to record by the recorder of deeds, the superintendent of insurance and the clerk of the supreme court of said District shall certify to said recorder that the said company has complied with the above conditions relative to its cash assets and the deposit of bonds as hereinafter provided. Any insurance company or association hereafter transacting the business of life insurance on the assessment plan in the District of Columbia, whether incorporated in the District of Columbia or elsewhere, including sick, accident, and death benefit assessment companies or associations, and sick and accident companies or assessment associations, shall file, on or before the first day of March, with the superintendent of insurance a detailed annual statement, sworn to by its president or vice-president and its secretary or assistant secretary, showing its true financial condition as of the thirty-first day of December next preceding; also a statement, under

oath, showing that it pays the maximum amount named in its certificates or policies as the same become due and payable, and for the last twelve months has uniformly done so; and shall pay for filing such report as aforesaid the sum of ten dollars to the collector of taxes. Such assessment companies or associations shall furnish any other information not inconsistent with law that the superintendent may require. On failure by any such company or association to make and file any of the aforesaid statements or reports within ten days after notice from the superintendent of insurance, its license to transact business in said District shall be revoked by said superintendent, and the president, vice-president, secretary, and assistant secretary of said company or association shall be punished by a fine of not more than one hundred dollars or imprisonment in jail for not more than sixty days: *Provided*, That every insurance company whatsoever, anything contained in section six hundred and seventeen of the Code of Law for said District to the contrary notwithstanding, shall make the reports required of insurance companies by subchapters four and five of chapter eighteen of said code, and as in this section provided; and the companies or associations referred to in this section shall also furnish to the superintendent of insurance the statement of business required by section six hundred and fifty of said Code. Every such assessment company or association doing a life insurance business only that issues certificates or policies to individuals for not more than one thousand dollars shall deposit in the registry of the supreme court of the District of Columbia, on or before the thirty-first day of December, nineteen hundred and six, to guarantee the payment of benefits as provided for in its certificates or policies, United States, railroad, or municipal bonds the market value of which shall at all times be as much as fifty thousand dollars; and every assessment company or association doing a life insurance business only that issues certificates or policies for more than one thousand dollars shall deposit in the registry of said court, on or before the thirty-first day of December, nineteen hundred and six, to guarantee the payment of benefits as provided for in its certificates or policies, United States, railroad, or municipal bonds the market value of which shall at all times be as much as one hundred thousand dollars.

Any company or association that issues certificates or policies on the assessment plan providing for the payment of benefits on account of sickness or accident, in addition to an amount to be paid on the death of a member, shall be known and designated as a sick, accident, and death benefit assessment company or association, and any assessment company or association that issues certificates or policies providing for the payment of indemnity only on account of sickness or accident shall be known as a sick and accident assessment company or association.

All such sick, accident, and death benefit assessment companies or associations, and sick and accident assessment companies or associations, shall deposit in the registry of the supreme court of the District of Columbia, on or before the thirty-first day of December, nineteen hundred and six, to guarantee the payment of benefits as provided for in its certificates or policies, in lieu of the bonds hereinbefore required of assessment life insurance companies or associations, United States, railroad, or municipal bonds the market value of which shall at all times be as much as ten thousand dollars.

No company or association licensed to transact business as a sick, accident, and death benefit assessment company or association shall issue certificates or policies for greater amounts than five hundred dollars on the life of any one person.

All classes of companies or associations named herein doing business in the District of Columbia shall respectively issue uniform policies or certificates, the form of which shall, before such issue, be approved by the superintendent of insurance, after a hearing to be fixed by him on notice to every assessment insurance company or association mentioned herein, either on his motion or on application of the majority of the companies or associations interested. Forms of policies or certificates may be changed from time to time after similar notice and hearing. And no such company or association shall be entitled to do business in the District of Columbia without the approval of its policy or certificate by the superintendent of insurance, subject at all times to an appeal to the Commissioners of the District of Columbia; and such superintendent shall have power to revoke the license or to refuse to grant a license to any such company which shall issue any such policy or certificate in form not approved by the superintendent of insurance, subject to appeal as aforesaid.

All assessment companies and associations referred to in this section shall

be required to have from the superintendent of insurance and keep in force a license before transacting business in said District; and the clerk of the supreme court of the District of Columbia is hereby authorized, at the cost and expense of every of the said assessment companies or associations named in this section, to receive for deposit the bonds as provided for herein and to receipt for the same, and do all that is necessary to be done by him for the purpose of carrying out the provisions of this section. Whenever the market value of the bonds so deposited as aforesaid by any assessment company or association mentioned in this section shall fall below the amount required herein, or whenever its liabilities exceed its assets, it shall be the duty of the superintendent of insurance to suspend the license of said assessment company or association, and unless the deficit be made good within thirty days thereafter he shall revoke its license. Any interest due and payable on bonds deposited as herein provided shall be paid by the clerk of said court to the assessment company or association so depositing said bonds.

Every such assessment company and association shall be required, when necessary to pay its death and indemnity claims, to levy extra assessments on its members; and any such assessment company or association that fails for a period of thirty days after notice from the superintendent of insurance to comply with any provision of this section, or fails to pay within thirty days a final judgment or decree rendered against it by any court of competent jurisdiction, shall have its license to transact business revoked; and such judgment or decree may be satisfied from any deposit hereinbefore provided to the credit of defendant company or association on petition to be filed by the party or parties in whose favor said judgment or decree may be.

Any fund hereinbefore required to be deposited may be exchanged from time to time or may be withdrawn upon certificate from the superintendent of insurance that the assessment company or association depositing same has no liability on any outstanding policy: *Provided, however,* That nothing contained herein shall interfere with or abridge the rights of any fraternal beneficial association licensed to transact business under subchapter twelve of chapter eighteen of the Code of Law for the District of Columbia or incorporated by special Act of Congress: *Provided further,* That nothing contained herein shall apply to any relief association, not conducted for profit, composed solely of officers and enlisted men of the United States Army or Navy, or solely of employees of any other branch of the United States Government service, or solely of employees of any individual company, firm, or corporation.

AFTER RECESS.

The committee reassembled, pursuant to recess, at 2 o'clock p. m., Hon. John A. Sterling in the chair.

Mr. STERLING. Now, we will hear from Mr. Bergmann. If you are ready, Mr. Bergmann, you can now proceed. We will hear you.

STATEMENT OF MR. H. H. BERGMANN, OF WASHINGTON, D. C., REPRESENTING THE GERMAN-AMERICAN FIRE INSURANCE COMPANY.

Mr. BERGMANN. Mr. Chairman and gentlemen of the committee, I simply want to call your attention to a few of these sections, in the interest of local fire insurance companies.

In the first place I would like to call attention to section 2, page 2—

That all insurance companies now or hereafter incorporated by authority of any general or special law of Congress shall be subject to the provisions of this act, and to such laws as may be hereafter passed affecting or altering their corporate rights or duties or dissolving them.

Now all the local insurance companies are incorporated at the present time under the general law of incorporations. If the effect of this section is to be retroactive it would work a hardship upon

practically all the local fire insurance companies. I am only speaking of the fire insurance companies.

In the first place this code, on page 26, section 22, requires the capital stock of fire insurance companies to be not less than \$200,000. I do not know whether or not it is the intent and purpose of this law to be retroactive. My own company, the German-American, has only \$100,000 capital, and most of the other local companies have less. One, I think, has \$125,000 capital, and one other local company has \$200,000. If this law should be retroactive and should compel us all to increase our capital stock to \$200,000 it would work a hardship upon us. Most of the local companies have a pretty large surplus. My own company has a surplus of \$187,000 net over and above all liabilities. That is one point.

Then another one was in regard to the investment of the assets of domestic companies. Under section 26 the capital of domestic companies shall be invested only as follows:

First. In first mortgages of real estate not exceeding in all sixty per centum of its capital nor twenty per centum thereof in one mortgage, the market value of which real estate being at least double the amount loaned thereon at the date of investment.

Now that would work a hardship on every one of us. Probably most of the assets of fire insurance companies are invested in real estate mortgages, and I believe they are all first mortgages. My own company's investments are in first mortgages, but the real estate values upon which those mortgages are made are not invariably double the amount of the mortgage. The general rule, I think, is—it is with my own company—not to loan above two-thirds of the fair market value. That market value is usually fixed by appraisers of the company—the directorship of the companies, composed of local business men, men who have a good, fair knowledge of real estate values here in the District; and upon the valuation made by those gentlemen the loans are made.

Now, in a city like Washington, the capital of the nation, real estate values are not very fluctuating, and they are not boomed unnaturally; and that provision would work a hardship upon us, especially when you take into consideration the fact, which I think is the rule, that most of the companies—it is with my own—loan only upon improved real estate, property that has a rental value; and the experience of my company—and it has been in existence now thirty-three years—has been that in that whole time we have never lost one dollar on our real estate mortgages. In that whole time we have probably been compelled to buy in and foreclose not more than a dozen pieces of property. We have disposed of every one of them and sold them at a profit by reason of a subsequent enhancement of value. The local companies, inasmuch as they do a purely local business, have a field that is restricted to the District of Columbia, and a requirement of that kind would work a hardship to us. I do not think real estate values in Washington can be compared with a great many smaller towns throughout the country which are booming, and where their values are inflated and liable to collapse again.

Now, another thing I want to say in connection with that is, that we are required, under the present code, to render to the department

a complete list of all of our mortgages, in fact of all securities. We give in that the amount of loan, the time it was made, where recorded, the valuation of the property, the amount of insurance—every detail. Every year we furnish that complete list to the insurance department. The insurance department has already, once since it has been in existence, gone over our securities, and they are welcome to go over them every year if they see fit. I think this proposed code requires a thorough examination of all companies every three years. There is no objection to that at all, but when it comes to fixing arbitrarily the value of the real estate and the amount of loans that we shall make on real estate at 50 per cent of the market value, it works a hardship, and especially if that law should be enforced after the 1st of January, 1907, and be made retroactive, it would compel us, possibly, to call in a great many of our loans that are not up to that standard, but which nevertheless are considered good, safe security by any impartial examiner.

Then I want to call your attention to this fact, that in that same section you will find under the caption 7 a provision that the company may invest its assets in a note or notes of a citizen of the United States with a pledge as collateral of the securities above mentioned, mentioning mortgage bonds, railroad securities, etc., at not more than 75 per cent of the market value thereof. There you permit companies to invest up to 35 per cent upon collateral security, and upon real estate security, the best you can get, you hold them down to 50 per cent.

Mr. AMES. An interruption, Mr. Chairman. For the information of the committee I would state that the bill as drawn proposed that there should be no limitation at all upon the financial conduct of an insurance company except as to investment of its capital stock. We did not believe there should be any limitation upon the investment of bonds or premiums taken in. That was agreed to by the insurance commissioners, but the actuaries thought there should be a limitation, so that was changed from capital to assets. I myself think there should be no limitation as to the investment of funds.

Mr. STERLING. What is your reason for that, Mr. Ames?

Mr. AMES. This is the old Massachusetts law in regard to capital stock. A company may have its capital of \$200,000 or \$300,000 in proper securities.

Mr. STERLING. And its other assets too?

Mr. AMES. There has been no complaint on that. If there is any trouble it has been that the returns have been so great that the humans running the company could not handle them. Do you not think that is really the abuse that has come, rather than that the abuse came from not having it properly invested?

Mr. BERGMAN. I do not understand you.

Mr. AMES. Do you not think that the abuse, if any, that has arisen from the investment of funds of insurance companies could be traced to their being too well invested, rather than to their not being well invested, or to their being too poorly invested?

Mr. BERGMAN. I do not know just how to answer that.

Mr. STERLING. It goes rather to the question of safety than to the question of percentage of income.

Mr. AMES. Yes; this was a question of safety, following the New York law and the laws, more or less, of Connecticut and Indiana and

New Jersey, putting a limitation on the capital stock and making no limitation thereafter.

Mr. BERGMAN. If you make the limitation as low as 50 per cent, I think it is rather too high for the District of Columbia. I think a 60 or 65 per cent loan on a conservative valuation would be safe. These valuations are made by men of very conservative views, who do not take what a man considers his property to be worth. Take a piece of property probably worth \$6,000, as estimated by the owner, and he might possibly get it, but the chances are that the property would be valued at perhaps \$4,500 or \$5,000, and by taking 60 per cent of that, I think, you would have a very safe loan; and taking into consideration the fact that the property here in the District in the past years has, most of it, been steadily advancing and increasing in value, there seems to be very little likelihood of there being a large slump in real estate values here in the District.

Mr. AMES. A question: Do you think there should be a limitation upon an investment of the assets of an insurance company?

Mr. BERGMAN. No, sir. I would not put that limitation in the law. I would leave that to the good judgment of the men managing those companies, subject, however, always, to a revision by the insurance department. The insurance superintendent of the District, under the defective laws as they exist to-day, if he had the necessary help he would be perhaps willing to go over these securities and inspect the properties with experts, and I believe it is his intention some day to do that. And then if he should find the real estate securities of the companies too low in his opinion, let him pick out these and have them called in. But to arbitrarily fix a percentage above which you ought not to go will work a hardship; and I tell you now it could be circumvented by simply appraising the property higher. Who shall fix the market value? That is more or less fictitious, too.

Then there was one other point that I wanted to speak about, and that was in regard to the fee to be charged to agents and brokers. Section 87, page 110, provides—

That the insurance commissioner may, upon the payment of ten dollars, issue to any suitable person a license to act as an insurance broker to negotiate contracts of insurance or reinsurance, or place risks, or effect insurance or reinsurance with any qualified domestic company or its agents, and with the authorized agents within the District of Columbia of any foreign company duly admitted to do business within the District of Columbia.

In my opinion that fee is entirely too low. The present fee is \$50. It simply opens the door to every Tom, Dick, and Harry who has a little spare time on hand to take out an insurance license as a broker and go around soliciting insurance and placing it with this and that company, etc.

The trouble with our business here in Washington is that it is conducted by too many people simply as a side issue, and we would like to see, if there is going to be a model law made for the District, to be copied by other States, one enacted that would also tend to raise and elevate our profession. At present the rate is \$50. I think that is low enough, and I would suggest, in connection with that, that so far as the District is concerned, and the licenses and fees are concerned, that they be made about what they are at the present time. There is a \$50 license for a broker, a \$50 license for a principal agent, and a \$5 license for solicitors. In my opinion \$5 is very low, but a

solicitor of a company under the present law is restricted in the solicitation of business to that one company. He can not solicit for any other company, and if he brings to a company for which he is soliciting business something that the company does not want or can not take or is loaded up on already, he simply loses that much. He can not go and broker it elsewhere. That license of \$5 might possibly be left as it is, but I still think that a license of \$10 for the broker or a man who should make it the business of his life, or the principal business at least, would be low enough. I think he could well afford to pay \$50. I would like to see it made \$100. It would tend to elevate our profession.

I would like to ask Mr. Ames whether or not section 2 is to be amended so as not to be retroactive upon the companies now in existence?

Mr. AMES. We could not make a law that would be retroactive.

Mr. BERGMAN. You could not?

Mr. AMES. No, sir.

Mr. BERGMAN. That is what I have always understood.

Mr. AMES. That section was put in to cover, in the States, a situation that might arise similar to the Dartmouth College controversy in New Hampshire. So far as the District is concerned, Congress has the right to nullify or abrogate contracts, but that right does not reside in the other States, however.

Mr. BERGMAN. I think that is about all I wanted to say, Mr. Chairman. I simply wanted to call attention to these sections of the law which in my opinion would work hardship to the local fire-insurance companies.

Some of them have been in existence for forty or fifty years and longer, and have always met their obligations, and have a good surplus on hand and are doing a very conservative business.

Now we welcome an improved code, and we welcomed a few years ago, the new insurance code under which we are working now, because prior to that this field was a field for all the wildcats of the country. We are perfectly willing to comply with all the publicity requirements of the present law, and of any new law that can be made; but we do not think it should work a hardship in the manner of our investments.

I thank you very much for your attention, gentlemen.

Mr. DRAKE. Mr. Chairman, we have with us an expert fire insurance man, who would like to speak along the same line.

Mr. STERLING. Does he desire to speak now?

Mr. DRAKE. Yes; if you please. He just wants to make a few suggestions.

Mr. STERLING. Who is it?

Mr. DRAKE. Mr. Hamilton, of Washington.

Mr. STERLING. Mr. Hamilton, we will hear you.

STATEMENT OF A. N. HAMILTON, OF WASHINGTON, D. C.

Mr. HAMILTON. Mr. Chairman and gentlemen, I do not wish to speak before the committee as an expert, or as a manager of an insurance company or association. I will take only two minutes of your time.

There are two points that Mr. Drake called my attention to and asked me to bring them up, and those are these:

On page 97 you limit the appraisers to the citizens of the District of Columbia, which I do not believe is a good feature in any bill, for the simple reason that the commercial interests of the District of Columbia are very small. As an illustration, I might say that if there was a heavy loss in the Corcoran Art Gallery it might be advisable to the insured to have an appraiser from some other State. For that reason I do not believe you should limit the appraisers to the District of Columbia.

The other point you will find on page 100, line 1:

No insurance company shall insure in a single risk a larger amount than one-tenth of its net assets.

I think that there should be something added to that, something like "as per the last statement to the insurance commissioner." In that event we would know what the assets were to date from, and not understand it to be daily assets.

Mr. STERLING. What position do you occupy?

Mr. HAMILTON. Contract manager of the Board of Fire Underwriters of the District of Columbia. I do not appear here as a member of any insurance body, but simply as an assured, taking up these two points.

Mr. STERLING. Is Mr. Hay here now? If not, we will now hear from Mr. Brosnan.

STATEMENT OF MR. JOHN BROSNAN, OF WASHINGTON, D. C.

Mr. BROSNAN. Mr. Chairman and gentlemen, I shall address you as briefly as I can, realizing the importance of time in this discussion.

The bill in which I am interested is H. R. 19154, introduced by Mr. Samuel W. Smith, of Michigan, May 10, 1906, with certain amendments—at least I believe the department here has put a few amendments in. To my mind it comes nearer to the correct thing than any other bill offered to date. In the first place, it puts the assessment companies where they belong, in a class by themselves. This particular kind of insurance is the outgrowth of necessity. Those insured in these companies are mostly poor persons, and many of them improvident. The low wages they receive prevent them from saving anything toward the day of sickness. In fact these associations take in a great measure the place of public charity, as is well known by those of us who for years have been connected with this business.

I might continue on this theme so long as to tire you, but it suffices to say that there exists an imperative need for this class of insurance; also, honesty and responsibility in dealing with its members; the poorer the person the more need of wholesome protection.

Now, coming down to this bill, the District Commissioners and the superintendent of insurance are endowed with sufficient authority, as they should be. For example, first, it decrees that all companies must be incorporated, thereby making them responsible as companies: next, requiring them to make full reports of their workings to the insurance department, not only as to their income and expenditures, but also any other information they may desire, not inconsistent with the law.

Another good provision is that if any such company refuse to

furnish such information the officers may be punished by fine or imprisonment.

This penalty tends to bring about what all good citizens are in favor of, publicity, so that everyone may know in what manner these associations are dealing with their patrons. Secondly, there are three classes of insurance named in this bill; one which gives life insurance for large amounts they are required to have a deposit of \$100,000. Another that pays sick, accident, and death insurance—this is the kind of a company in which I am interested.

The bill provides for a deposit of \$10,000 by this class, which is ample, because the death claims are small in comparison to death insurance only; also, for the very good reason that members have an opportunity to draw benefits during their life, and in numerous cases receive more than they would in any industrial insurance that pay at death only. I can safely say, from an experience of sixteen years, that there is a need for industrial sick benefits insurance as there is for industrial life insurance only. The only difference is that it requires less capital, the \$10,000 required being ample, as I said before, and the District Commissioners and the insurance department have repeatedly stated in the hearings before the House Committee for the District of Columbia and at other times. I might go on further, but it would not help the case any.

Something was said here this morning about salaries paid in these companies. I think the best way to explain the thing is to take up ourselves. When I say ourselves I mean our own company. Our own company was thirty years old last February, and probably is the oldest company here of this class, with one exception—there is one other company that may be a little older, and possibly two companies—I will not make a positive statement about that.

The salaries of the officers during 1905 were \$4,540, a fraction less than 5 per cent, or, to be more precise, 4.9 per cent of the total income of the association, which was \$92,904.65. The officers give their full time and attention to the affairs of the association, with one exception. Their duties are exacting, both at the desk and in the field, supervising in an active manner the business of the association. The average weekly remuneration of these men is but the small sum of \$21.83, thus showing the conservative management of the association. The premiums are collected weekly at the homes of the insured, which is necessary owing to the peculiar class of people insured in companies of this kind, thus entailing great expense, as it necessitates the sending of an agent at least fifty-two times a year.

I have prepared here a table of averages which, I think, will be interesting information to your committee. These averages are based upon our experience. The average weekly premium is 14 cents, the average age is 25.9 years, the death insurance averages \$36.04. We find that the members drawing benefits average three weeks a year. This at the premiums cited above amounts to \$10.81 per annum. Taking the actuaries table of expectancy as a basis we find that a man at the age of our average member, 26, has thirty-seven future years of life and a fraction over. He during this time will receive from us \$402.89 in sick benefits and at death \$36.04, making a total of \$438.93. Using the American experience table his expectancy is 38.12 years, thus enlarging the total to \$446.82. Compare this with

the amount received from the amount received from an industrial company paying at death only. It is vastly more profitable for the wage-earners, who are the ones we do business with. It is not my intention to make any hurtful comparisons, but the facts show for themselves. At death a person would receive from the death company \$222.

Gentlemen, I believe that there is room for both classes of insurance. Herewith is a table of income, number of persons insured, and amount of insurance on new and old members; also policies written, and lapses, and net number of policies and insurance standing at the end of the years stated. In conclusion, will state that the great factor in our favor is the very conservative management and the infusion of new blood in the way of rapid increase weekly, for which the company has to pay to a great army of agents, both as canvassers and collectors, and if we did not use this means the company would not be able to stand.

There is one more thing that will tend to perpetuate these associations more than any other which I can conceive, and that is the standing before the public which this company would have should this committee report favorably on some regulation, and Congress pass bill 19154, which is asked for here by us.

Gentlemen, you can not understand how important it is to have us recognized before the public, before the department of insurance, and before everybody, because we have men going around here that probably go to your kitchens and canvass your servants, and we are looked upon with suspicion by a great many people; but we are doing good work.

Now, one other thing. It would prevent irresponsible agents from organizing companies without sufficient capital and then twisting the business of their former employers, which has been done in this District to a very great extent.

Before I conclude let me say, from the showing made here the natural question would be, How are you to continue the solvency of the association? I would answer that in the regular weekly assessments collected from the members, the right to levy additional assessments when necessary, and the deposit required by the proposed bill, and the natural consequence of good management in providing other reserves for working capital. When we say regular assessment we mean this premium that is advertised on our circulars—10, 15, 20, and 25 cents a week. That has been regarded always as the regular assessment. The question was brought up as to the word "dues." If this passes without putting the word "dues" in there—I won't say that Mr. Drake would do it; I don't believe he would, because he understands it, but the fear was that there might be some legal complication, which I am not quite able to understand.

Mr. Davis is here, and he will explain that part of it to you—that the assessment might require the sending out of a postal card or some other notice of that kind, like they do in the case of lodges. This is between the devil and the deep blue sea. This is between the fraternal orders and the regular life insurance companies. There is a little strata of people here that need that protection, and, as I said, necessity has established us and brought us this class of business, and there is no fancy business about it. We are here and have been doing business here straight along, and I believe every man connected with

it is a citizen of the District and has been for many years. I have myself been here since I was a boy. The men behind this company are men of honesty and character.

But what I wanted to get at, Mr. Drake, was if the question was put to you under this law that is now proposed, would the way we have been going on right straight along, the way we have of collecting, continue? Is that your construction?

Mr. DRAKE. No, sir; I want to explain right there.

Mr. BROSNAN. Excuse me, sir, I simply asked to get information before the committee.

Mr. DRAKE. There is a proviso that I have insisted upon in each case being put in the policy allowing the extra assessment if necessary. There is no law here that authorizes the incorporation of an assessment life insurance company, or of the assessment form of insurance company. We have tested both of the mutual cases in the Supreme Court and the Department of Justice.

Mr. BROSNAN. Yes; Mr. Drake has been very fair about that; and I will say he got our company to insert in red ink at the bottom of the policy this notice about extra assessments, so as to call it to their attention. We made no kick about that at all. We are willing to comply with any regulation that is put upon us that is fair.

This association has accumulated and deposited in the State of Virginia \$10,000, as required by the law of that State, and has sufficient to deposit another \$10,000 in the District of Columbia if called upon to do so. If your honorable committee had time to investigate you would find that it is the universal custom throughout several States, which deem it necessary to have deposits made by these companies.

Some one said here that this was peculiar to the District, this class of business, and I want to say that that is not so. I can count on my finger ends five or six States that have this class of insurance, and it is gradually growing all over the country. This whole industrial arrangement of insurance is not over twenty-five or thirty years old, anyhow, I believe. The Metropolitan sprung up from a society something like this, and now they have their millions, and the same way with the Prudential and other companies; and they are gradually going out of the small insurance into the larger insurance, and so it goes on. This system of insurance is young, comparatively, and this table I have presented here will show that during the past year, 1905, our company paid 28 per cent in claims to the members. Now, that compares favorably with any other insurance company, and we have accumulated some surplus, as I have shown you. We have over \$20,000. Our report of the Virginia company will show a little over \$20,000. Here is a report that is sworn to, and I will submit that if necessary.

In conclusion, I will quote from memory four or five States. There are Virginia, Maryland, Alabama—I am not quite sure about North Carolina, but I think North Carolina—Pennsylvania, Tennessee, Georgia, Florida, Texas, and nearly all the Southern States, and I am not sure about the other States up the other way or out West, but I am sure about the States I have named, and they vary as to deposits, some as low as \$1,000 and some up to \$50,000. Here in the District of Columbia we have only 300,000 people at most, and 90 per cent of our trade is among the colored people, and

they number about one-third of the population. We do have some white people insured, and we prefer them; they are better risks—everything better about them, but it is hard to get them from these other life insurance companies that are here. In these questions about a million dollars and all that—it makes me sick when you talk of a million dollars; I would not know what it looks like—so I hope we will get a respectable law here and give us a standing in the community, and whether we are tacked onto the Ames bill or no makes no difference to me, all we want to do is to continue to live and protect these people whose money we have.

In conclusion, I will again state that if this committee reports favorably and Congress passes this bill 19154, they will have conferred a favor upon the citizens at large, rid the authorities of annoyance, and placed this class of business upon a legitimate footing. Thank you for your attention.

Mr. DE ARMOND. Have you a copy of the kind of policy that you issue?

Mr. BROSNAN. No; but I see my friend here with a batch of policies, and he probably has one. (After examining several policies.) Yes; here you are.

Mr. FLOWER. How much did you say in Virginia?

Mr. BROSNAN. Ten thousand dollars.

Mr. FLOWER. What is the population of Virginia?

Mr. BROSNAN. I don't know; it is a great big State.

Mr. FLOWER. Is it sufficient in Virginia?

Mr. BROSNAN. They seem to think so.

Mr. FLOWER. Is it? If \$10,000 is sufficient for a State of 2,000,000, is \$10,000 required for the little District of Columbia with only 300,000?

Mr. BROSNAN. You will have to answer that for yourself.

Mr. FLOWER. Would it be too great?

Mr. BROSNAN. I am not going into that kind of an argument with you.

This is the table I spoke of, showing the income, numbers of persons insured, and amount of insurance on old and new members. Also policies written and lapses, and net number of policies and insurance standing at the end of the years stated from 1902 to 1905, inclusive, as well as the income, the amount of claims paid, and the per cent paid in the District of Columbia.

Year.	Income.	Policies.	Insurance, old and new.	Policies written.	Amount of insurance.	Policies lapsed.	Amount of insurance.
1902.....	\$56,627.15	34,067	\$702,267.50	22,485	\$449,700.02	20,578	\$490,388.75
1903.....	65,134.07	34,751	637,318.75	21,278	425,440.03	21,487	429,740.00
1904.....	80,776.19	30,660	555,298.75	17,388	347,720.04	13,422	201,738.75
1905.....	32,904.66	43,296	865,920.00	26,068	521,360.05	24,545	490,900.00

NET INSURANCE AT END OF YEAR.

Year.	Policies.	Amount of insurance.	Income.	Claims.	Per cent of claims paid.
1902.....	13,479	\$211,878.75	\$39,963.71	\$3,118.99	22
1903.....	13,264	207,578.75	41,777.47	10,272.39	24
1904.....	17,228	358,560.00	42,124.04	11,338.19	27
1905.....	18,751	375,020.00	43,086.64	12,231.88	28

Mr. CAVE. I would like to ask Mr. Brosnan whether the State of Virginia requires now a deposit of \$50,000 for companies of the kind Mr. Brosnan represents?

Mr. BROSNAN. I think that is the law. I think they have a new law passed during the last legislature.

Mr. CAVE. In March.

Mr. BROSNAN. In March. They appointed a new commissioner, I know. They had no department; they were under the auditor of the State.

Mr. Brosnan inserted the following policy:

THE PROVIDENT RELIEF ASSOCIATION, OF WASHINGTON, D. C.

Incorporated under the laws of the United States in the District of Columbia.

Home Office: Provident Building, Corner New Jersey Avenue and G Street NW.

Sick benefits, \$——.

No. ——.

Death benefits, \$——.

In consideration of the answers and representations made in the application for this certificate of membership, and of each of the statements made therein, all of which are hereby declared and understood to be warranties in law, and not representations; and in the further consideration of the payment of the sum of —— cents at the office of this association, in the city of Washington, at the date hereof, the receipt of which is hereby acknowledged, and of the payment of the same sum weekly on or before every Monday subsequent to the date of this certificate, does promise, subject to the provisions and limitations herein contained, to pay, as hereinafter mentioned, the amount of funeral benefits specified in this policy.

And does further promise, conditionally, upon the receipt of the proof herein-after mentioned, and subject to the provisions and limitations herein set forth, to pay to ——, when absolutely disabled through sickness or accident from giving any attention or superintending in any manner their usual or any other occupation, the sum of \$—— per week, provided that in no case during the continuance in force of this certificate shall more than twelve weekly payments be made on the same during any period of twelve months. And the proof above referred to shall be the attending physician's certificate, written upon the blanks of the association (which shall be furnished on demand), countersigned by the medical examiner or any officer designated by the association, who shall have the right before countersigning any certificate to demand that the member be examined either by the association's medical examiner or by some other qualified physician in good standing, to be named and compensated by the association, and if there is no surface indication of sickness, or if the member declines to allow such examination, may refuse to countersign the certificate, and no benefits shall be payable thereunder. This certificate shall be furnished weekly by the member during the continuance of any such disability, and the receipt of such certificate during the week for which benefits are claimed, and the countersigning thereof, as aforesaid, shall be conditions precedent to any liability of the association.

And it is agreed furthermore, if the insured shall have any sickness, disability, or accident, for which sick benefits would be payable, and a qualified physician in good standing shall certify such sickness, disability, or accident to be permanent and probably incurable, and the medical examiner or any officer designated by the association approve the same, an amount equal to the death benefit will be paid, and this policy shall cease and be surrendered to the association. Also, that no obligation is assumed by this association prior to the date hereof, and on the delivery of this certificate the insured is alive and in sound health, and the first payment due after the issue thereof has been legally made while the insured is alive and free from disease.

And it is agreed furthermore, that no death benefits will be paid unless death occurs after twenty weeks from date of this certificate, but if the insured shall have any sickness or disability caused by accident after ten weeks from date of certificate, one-half of the sick or accident benefits specified above shall be paid, but the payment of such benefits will not act as a forfeiture of the right of the association to cancel this certificate during the first twenty weeks. No benefits will be paid for any sickness or disability having had its beginning

during the first ten weeks, or for death resulting from any sickness or accident having had its beginning during the first twenty weeks of membership, but the association will return all premiums paid on this certificate and cancel the same. After twenty weeks from date of this certificate the full weekly sick and disability benefit and one-half of the death benefit will be paid, and after one year from date of this certificate the entire death benefit will be paid.

Provided, however, That one-half weekly benefits paid under this agreement shall be construed to mean full weekly benefits in computing the number of full weekly benefits payable during the first twelve months of membership.

Provided further, That no more than seven weeks' benefits will be paid for any accidental injury sustained by the member. Said benefits to be added to any disability benefits paid during the year, and in no case shall more than twelve weekly benefits for sickness be paid in one year.

For and in consideration of said benefits the insured hereunder agrees to make the payments specified above, at the association's home office or any branch office designated by the association, on Monday of each and every week during the life of the insured hereunder, said payments to begin on the date hereof, and any additional sum or sums that it may become necessary to levy as assessments for that purpose.

And it is further agreed that if any payment shall be four Mondays overdue, the member, together with this certificate and all benefits hereunder shall, without further notice, stand suspended. A suspended member desiring to be reinstated may make payment in full of any sum or sums due, and if at the expiration of four weeks from the date of such payments all payments accruing during said four weeks have been paid, the member may be reinstated upon passing an examination satisfactory to the association. The acceptance, however, of such payment by the association shall be deemed to be conditional only upon the future reinstatement of the member, the association reserving the right to reinstate the member with or without a medical examination: *Provided further,* That no benefits will be paid for any accident or sickness occurring or having had its beginning during said four weeks, nor for death resulting from sickness or accident commencing or occurring during said four weeks: *Provided further,* That if any payment shall be more than four Mondays overdue, the member may make partial payments of their dues to the association or its agent, but no liability on the part of the association shall exist in favor of any member who is more than four Monday payments overdue, by reason of the acceptance of such partial payments, or until four weeks after the payment of all dues in full, as hereinbefore provided. Should the association decline to reinstate the applicant, the amount paid on account of reinstatement will be returned (within or at the expiration of said four weeks), or a tender thereof made, and this certificate canceled. Should the association fail to return or tender said last-mentioned amount within or at the expiration of said four weeks, said member shall be deemed to be reinstated; such reinstatement to date from the expiration of said four weeks.

If this certificate has been kept continuously in force for two years from date of this certificate, and no benefits have been paid thereon, an additional benefit of one-tenth of the mortuary value named on the face of this certificate will be added thereto, and for each year thereafter in which no benefits are paid, one-twentieth of the mortuary value named on the face of this certificate will be added.

This certificate of membership is issued to and accepted by the member, subject to the conditions printed on back, and the rules and regulations of the association.

Given under the seal of this association, at Washington, D. C., — — — — —
[SEAL.]

JOHN BROSNAH, *President.*
WM. O'MALEY, *Secretary.*

The following are the Conditions and Limitations referred to by which the obligation set forth on the face of this Certificate is explained and qualified, and subject to which it is issued.

1st. Payment of the death benefit may be made to either the executor or the administrator of said member or to the beneficiary designated upon the application for this certificate or subsequently designated by the member upon the association's form for change of beneficiary and filed at the association's home office, or to any other person appearing to said association to be entitled to the

same by reason of having incurred expense in any manner on behalf of said member for his or her burial or for any other essential purpose, and the production by or on behalf of this association of a receipt signed by either of the above specified persons shall be final and conclusive evidence to all intents and purposes that such sum has been duly paid unto and received by the person or persons lawfully and rightfully entitled to receive the same, and that all claims against this association under this certificate have been duly satisfied.

2d. If any statement made in the application for this certificate, whether made by the member or the soliciting agent, be in any respect untrue, this certificate shall be void, and all payments which shall have been made to the association on account of this contract shall belong to and be retained by the association.

3d. The member must keep the secretary of the association informed of his or her place of residence, and in case of his or her absence, to appoint some one to act for him or her as agent, to pay dues, and at the same time notify the secretary of the name and post-office address of such agent.

4th. No additional benefits will be allowed on subsequent certificates unless they contain express permission by endorsement thereon.

5th. The association does not pay benefits unless member is confined to bed seven consecutive days after proper notice has been filed at the office of the association during office hours. Going about feeling badly, doctor attending, does not come within the contract, and no benefits will be paid for same. No benefits will be paid for temporary insanity, except for such time member is actually confined to bed.

6th. The age of the person insured in this certificate shall be admitted on due proof, but if not so proven the amount of sick, accident, or funeral benefit payable under this certificate shall in no case be more than the single payment charged would have purchased by the association's rate in use at the register date hereof for such person's true age.

7th. Agents are not allowed to alter or discharge contracts, or waive forfeitures, or receive payments on certificates in arrears beyond the time allowed by the association.

8th. No payment made on this certificate while in force will be recognized by the association as valid or binding unless made to a duly authorized agent, and said agent entering said payment in the receipt book belonging with this certificate at the time it is made.

9th. This certificate and the receipt book containing the entries of payments made on the same shall be exhibited to the officers or authorized employees of the association at any time upon demand; and before any benefit can be claimed under this certificate, said receipt book must be presented at the office of the association.

10th. No member shall receive any benefits unless entirely disabled from performing labor, or paying any attention whatever to business of any kind, and under the care of a regular practicing physician. Weekly benefits begin only on receipt by the company of a written notice of the total disability and confinement to bed of the member hereunder, signed by the attending physician, who must be a physician in good standing and practice; said notice must also state the nature and character of sickness or disability for which benefit is claimed, and said benefit will be due seven days after the receipt of said notice, provided the said member shall furnish the association on or after the seventh day as aforesaid proof referred to herein as the "Certificate of attending physician," stating that the said member had been confined to bed for seven consecutive days as aforesaid, and that said confinement to bed was caused by sickness within this contract; each subsequent application for benefits must be in the same form and accompanied by the same proof as aforesaid. In no case will benefits be paid for less than seven days' sickness and confinement to bed as aforesaid. Members must positively be confined to bed in case of sickness, otherwise they will not be entitled to benefits.

11th. No benefits will be paid for sickness or death resulting through or by the member's own hand, whether sane or insane, or by being engaged in active military service, or in a fight or other violations of the law, or in consequence of the use of intoxicating drinks, opiates, or narcotics.

12th. Sick benefits will not be paid for accouchement or premature birth, abortion, or any disease of the genital organs in either sex. No benefits will be paid for death caused by abortion, venereal diseases, or violation of the laws of the land.

13th. In case of consumption, pulmonary disease, heart disease, rheumatism, sciatica, or paralysis, only one-half the amount of sick or death benefits due

under this contract will be paid for disability or death caused by such disease.

14th. And it is agreed, furthermore, that if the insured shall become insane or have any sickness, disability, or accident for which benefits would be payable, and a qualified physician should certify such insanity, sickness, disability, or accident to be chronic and probably incurable, and the medical examiner or any officer designated by the association approve the same, an amount equal to the death benefit at said date may be paid, provided the member having such chronic insanity, disability, sickness, or probably incurable accident has not previously received any benefits. Should any member receive any benefits for said chronic diseases or probably incurable accident, the sum or amount of money so received will be deducted from the death benefit payable under this condition, and this certificate will cease and be surrendered to the association. It is understood and agreed that this does not apply to any other benefits which may have been received by the member for any other sickness or accident.

15th. The failure of the collector to call for dues will not be deemed an excuse for nonpayment, as members can pay their dues at the office at any time during office hours.

16th. The association may require a member, beneficiary, or physician, or all of them to furnish an affidavit to adjust the terms of this contract.

17th. Beneficiaries must have something more than a pecuniary interest in the insured, as speculative policies are not issued by this association.

18th. No suit or action at law shall be maintained to enforce the performance of this contract until thirty days shall have expired after the filing in the principal office of the association of the proof of sickness, accident, or death, nor unless such suit or action be commenced within six months next after the sickness or accident for which the claim is made, if for sick or accident benefits; if for funeral benefits, within six months after the decease of the person insured under this certificate; and it is expressly agreed that should any such suit or action be commenced after the expiration of said six months, the lapse of time shall be deemed conclusive evidence against the validity of such claim, the benefit of any statute of limitation to the contrary being hereby expressly waived.

19th. It is the duty of the member to read this certificate, and if not correct, satisfactory, and in accordance with your application for same, return it at once, as the acceptance of this certificate is a guarantee that it has been applied for, read, understood, and accepted in good faith, and that the member waives all right of defense on account of agents misrepresenting or members not understanding contract.

THE PROVIDENT RELIEF ASSOCIATION, OF WASHINGTON, D. C.

Home Office: Provident Building, Cor. N. J. Ave. and G St. NW.

APPLICATION.

I hereby apply for a certificate of membership in the Provident Relief Association, of Washington, D. C., and promise and agree to make any and all payments that may be due by me under this contract, and to be governed by the rules and by-laws as they now exist or may hereafter be altered or amended, or, failing to do so, to relinquish all claims for benefits, and agree that this application and the certificate that shall issue from it shall form the contract between the association and myself.

Full name of applicant proposed for membership, _____.

Date of birth, _____. Age next birthday, ____ years. Race, W. or C. If adult, married or single. Sex, male or female.

Residence of applicant proposed, No. _____ street, city _____.

Occupation, _____. Per week, ____ cents.

Amount of insurance applied for: Sick benefits, \$_____; death benefits, \$_____.

Is said applicant now a member of this association? If so, give No. of certificate _____.

Is applicant now insured in any other company or society? If so, give names and amounts, _____.

Is said applicant now in sound health and been successfully vaccinated?

When last sick and of what disease? _____.

Is said applicant blind, deaf, or dumb, or has any physical or mental defect or infirmity of any kind? Has said applicant ever had: Accident of any kind, cancer or other tumor, fits or convulsions; disease of the kidneys, liver, heart, or lungs; habitual cough, hemorrhages, pneumonia, scrofula, rheumatism, ulcer or open sores, insanity, or paralysis? Is the person ruptured? Has said applicant ever been under treatment in any dispensary, hospital, or asylum, or been an inmate of any almshouse or other institution? Has said applicant ever been declined or postponed by this or any other company or society for insurance or benefits? _____.

Name, etc., of beneficiary, subject to provisions of certificate applied for as to payment, _____.

Relationship, _____ Age, _____ years.

I hereby warrant the truthfulness of the answers to the above questions, that I have not withheld any facts as to my age, health, habits, or history that might mislead the agent or association, and agree that such and the conditions annexed shall constitute the authority upon which certificate shall be issued.

_____, Applicant.

I have this _____ day of _____, 190____, personally seen and examined the applicant proposed for membership and saw the signature made on the bottom of this form, and am of the opinion that said applicant is in sound health; that said applicant's constitution is good, and I therefore recommend said applicant to be accepted as a member.

_____, Agent's or Physician's Signature.

STATEMENT OF MR. DANIEL CURRY

Mr. Chairman and gentlemen, I wish to state that one of the strongest arguments in favor of the passage of the bill that we submitted is the provision allowing the superintendent of insurance to at least supervise the policies or certificates that are issued by these companies, and that the nature of those certificates and policies causes the department of insurance and the insuring public a great deal of inconvenience. I will read you a sample of the conditions of the policy.

[Reading from blank policy submitted by Mr. Brosnan, headed "The Provident Relief Association of Washington, D. C."]

In consideration of the answers and representations made in the application for this certificate of membership, and in each of the statements made therein, all of which are hereby declared and understood to be warranties at law and not representations, and in the further consideration of the payment of the sum of _____ cents at the office of this association * * * and of the payment of the same sum weekly, etc.

Now, one of these warranties is:

If any statement made in the application for this certificate, whether made by the member or the soliciting agent, be in any respect untrue, this certificate shall be void, and all the payments that have been made to the association on account of the contract shall belong to and be retained by the association.

Now, the application in part is as follows:

Is said applicant blind, deaf, or dumb, or has any physical or mental defect or infirmity of any kind? Has said applicant ever had: Accident of any kind, cancer or other tumor, fits or convulsions, disease of the kidneys, liver, heart, or lungs, habitual cough, hemorrhages, pneumonia, scrofula, rheumatism, ulcer or open sores, insanity, or paralysis? Is the person ruptured? Has said applicant ever been under treatment in any dispensary, hospital, or asylum, or been an inmate of any almshouse or other institution: has said applicant ever been declined or postponed by this or any other company or society for insurance or benefits?

And then there is a space about seven-eighths of an inch to answer all that "yes" or "no," and that is signed by the member. Then the agent makes this certificate—this is the agent's or physician's certificate:

I have this — day of — personally seen and examined the applicant proposed for membership and saw the signature made on the bottom of this form and am of the opinion that said applicant is in sound health; that said applicant's constitution is good; and I therefore recommend said applicant to be accepted as a member.

That is signed by the agent or company's physician, and the applicant that gets this certificate has got to warrant that any statement wrongly made by himself or this company's agent will invalidate the policy and forfeit all premiums paid thereon to the company.

MR. HARTMAN. I represent the Union Insurance Company, and I would like to read our policy.

MR. BROSNAN. With your permission, I would like to say that I do not know what the legal meaning of the word "warranty" is, but, as a matter of fact, we do not follow that up.

MR. CURRY. I offer that as an argument in favor of the supervision of these policies by the superintendent of insurance.

MR. DAVIS. Which we are all willing to have.

MR. BROSNAN. We agree to that, yes.

MR. CAVE. Ninety per cent of the companies doing business along this plan object to the provisions of that kind of a policy, and are not using it.

MR. DE ARMOND. I notice in this statement just handed in, the Provident Relief Association—if I read it right—that in 1905 26,068 policies were written and 24,445 lapsed. Is that correct? I may be wrong about that.

MR. BROSNAN. I guess that is correct; yes.

MR. DE ARMOND. All right; it is immaterial.

MR. BROSNAN. It goes to show that very little of it stands during the first year. It is very costly to get this business and to hold it, and that is where all this money goes; it does not go to the managers at all. There is not a man here connected with any of these companies that gets hardly a living salary out of it; those with the companies are simply hoping, hoping some day to build up a company.

MR. DE ARMOND. According to this the average number lapsed is almost equal to the number issued, and one year the number that lapsed is larger.

MR. BROSNAN. That was an error in bookkeeping. I took that from the reports, and I put it in exactly, and those reports are open to the investigation of anybody. That was an error where it showed that lapses were greater than the number taken out. But the others are absolutely correct.

STATEMENT OF MR. G. W. CAVE.

Mr. Chairman and gentlemen of the committee, I represent the American Home Life Insurance Company of Washington, D. C., a company doing business on the assessment plan, as authorized by an act of Congress of 1887, and amended by the insurance laws of the District of Columbia that went into effect January 1, 1902, operating under the provisions of section 653 of the Code of Laws of the District of Columbia.

I appear here for the purpose of explaining to this committee the absolute necessity of some insurance legislation at this time. House bill 19154 is the outcome of House bill 17142, which was introduced by Mr. Babcock, chairman of the Committee on the District of Columbia, in the House several months ago. A few amendments were added to H. R. 19154, principally by the members of the District of Columbia Committee in the House, after several hearings. Originally, the first hearing was given the local companies interested in assessment insurance in the District of Columbia by the superintendent of insurance; second, by the Commissioners of the District, and thereafter there were two or three hearings given, as I say, by this committee on the District. The corporation counsel, the attorney for the insurance department, the superintendent of insurance, and Commissioner Macfarland of the District of Columbia urged upon this committee the absolute necessity of some legislation such as contained in House bill 17142, which, as I say, has subsequently been amended, and now is contained in House bill 19154, which is before this committee.

Commissioner Macfarland, the corporation counsel, and the attorney for the insurance department appeared before this committee and urged personally the absolute necessity of insurance legislation on this subject. Their reasons were that companies of this kind could and are now incorporating and embarking in business in the District of Columbia without any security of any kind to their policy holders. For instance, I will read you in part a letter of the superintendent of insurance in answer to an inquiry written by a law firm of the District of Columbia concerning a company that was incorporated in 1904. I will leave the name of the company out, but will read the letter:

Yours of December 7, 1904, was duly received, and in reply thereto I beg to state that the so and so association of Washington is licensed by the department for the license year ending April 30, 1905. The nature and character of its business is that of industrial assessment life insurance. The amount of the capital stock authorized is \$5,400, 10 per cent of which, \$540, was paid in cash upon its organization, which conforms to section 613 of subchapter 4, chapter 18, District Code.

Thos. E. Drake, superintendent.]

SCHEDULE A.

[Filed February 25, 1905; J. R. Young, clerk.]

Law No. 47556.]

OFFICE OF THE DEPARTMENT OF INSURANCE,
DISTRICT OF COLUMBIA, 416-418 FIFTH STREET NW.,
Washington, December 10, 1904.

GENTLEMEN: Yours of the 7th instant was duly received, and in reply thereto I beg to state—

First. That the Puritan Life Association, of Washington, D. C., is licensed by this department for the license year ending April 30, 1905.

Second. The nature and character of its business is that of industrial assessment life insurance.

Third. The amount of capital stock authorized is \$5,400, 10 per cent of which (\$540) was paid in cash upon its organization, which conforms to section 613 of subchapter 4 of chapter 18 of the District Code.

Fourth. Under section 653 of subchapter 5 of chapter 18 of the Code, the matter of creating a reserve or emergency fund is left optional with the association. This association made no provision in its charter for any such fund, and the security to policy holders, over and above surplus, is confined to its paid-up capital stock and the surplus.

Fifth. This association was organized within the present calendar year, and, therefore, has not submitted to this department a report of its financial condition other than as it existed at the time it was licensed.

Yours, very truly,

THOS. E. DRAKE,
Superintendent of Insurance.

MESSRS. SHEEHY & SHEEHY,
406 Fifth Street NW., Washington, D. C.

SCHEDULE B.

[Filed February 25, 1905; J. R. Young, clerk.]

THOS. E. DRAKE, superintendent.]
Law No. 47556.]

OFFICE OF THE DEPARTMENT OF INSURANCE.
DISTRICT OF COLUMBIA, 416-418 FIFTH STREET NW.,
Washington, January 7, 1905.

GENTLEMEN: Replying to your favor of the 27th ultimo, I beg to state that that feature of section 548 of subchapter 5 of chapter 18 of the District Code which you quote is so clear and definite that an official ruling of the superintendent, approved by the Commissioners, has not been deemed necessary. The department has applied it on one occasion successfully to a fire-insurance company.

While the section referred to seems to single out life and fire insurance companies or associations, it is implied, and has been so held by the department, that the feature referring to the impairment of the capital stock of an insurance company or association applies to all kinds of insurance companies, including accident, casualty, miscellaneous, etc.

Yours, very truly,

THOS. E. DRAKE,
Superintendent.

MESSRS. SHEEHY & SHEEHY,
406 Fifth Street NW., Washington, D. C.

Supreme court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing to be true and correct copies of exhibits marked "Schedules A and B" filed with petition for mandamus, in cause No. 47556 at law, wherein United States, ex rel. Royal Benefit Society, a corporation, is petitioner, and Thomas E. Drake, etc., is respondent, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 3d day of April, A. D. 1906.

[SEAL.]

JOHN R. YOUNG, *Clerk.*

Now, gentlemen, there was a company organized to transact the business of industrial life insurance in the District of Columbia under a Federal charter with a total asset of \$540, with which to purchase furniture, stationery, literature, and employ agents, or, in other words, to equip itself to do the business of life insurance. The sum of \$540 was not sufficient to buy stationery and furniture. They had evidently in mind no idea of furnishing protection to their insured.

That and several other incidents similar to that impressed upon the Commissioners, the superintendent of insurance, also those engaged in business who are ready, willing, and able to protect their policy holders, the importance of having some insurance legislation. The absence of some sound legislation will necessarily result fatally to local insurance companies. In other words, we claim that we can not conduct this business properly with security both to the company and the policy holder without some local supervision, and it is agreed both by the Commissioners, the superintendent of insurance, and the majority of the companies, as I say, that are willing to furnish some sort of protection to their insured, that this bill (H. R. 19154) comes as near covering the situation amicably as anything that they have been able to arrive at in the past four years.

The superintendent of insurance, when he first took charge of his office over four years ago, realized that something of this kind was needed. We united with him in an effort to bring about some legislation of this kind, and did succeed in 1904 in getting a bill similar to this through the House, but owing to the shortness of the session and the importance of business, and so forth, it failed to pass the Senate.

An attempt similar to that one failed last year.

Now, it is claimed by the superintendent of insurance, and I believe by the managers of the Ames bill, that we will be amply protected by an amendment added to the Ames bill, page 81, section 56, which reads as follows:

That no life insurance company which issues any contract, the performance of which is contingent upon the payment of assessments made upon survivors, shall do business within the District of Columbia.

That is the original bill. The amendment is as follows:

Except those companies or associations now authorized to do business in said District which shall have and maintain a reserve fund on their assessment policies or certificates equal to the net value of such policies or certificates valued as one-year term policies, as provided in section ten hereof.

Now, gentlemen, I claim that we are exempt only by that amendment from the operations of section 56 and are therefore amenable to the provisions of the rest of the Ames bill, which, to begin with, provides that in order to do a life and accident business only, we shall have \$200,000 invested in securities as provided herein. That, of course, would put the majority of the local companies out of business. In addition to maintaining a legal reserve on our policies on a basis of 4 per cent. I will read section 10 or a part of it. This is the section referred to:

That the Commissioner shall compute yearly the net value on the last day of the preceding year of all outstanding policies in every company authorized to issue life insurance in the District of Columbia, calculated upon the basis of the American experience table of mortality, with interest at not exceeding four per cent per annum on existing policies, and at three and one-half per cent per annum on policies heretofore issued.

There is a further provision in section 10 as follows:

On all policies of insurance other than life he shall charge fifty per centum.

Now, this section provides for the existence of sick and accident companies only, which of course could not be construed as life insurance, because there is no life-insurance feature attached to it. And the company I represent, the American Home Life, does a sick,

accident, and death benefit business all in one policy; also 14 other local and 7 or 8 out-of-town companies.

House bill 19154 provides for this kind of insurance as done by local and others in the District of Columbia. It would be impossible for them to maintain a reserve of 50 per cent of their gross premiums and exist or meet their obligations. So, therefore, it would be impossible to have this class of insurance, or the measures contained in this bill, become a part of the Ames bill under the amendment to section 56 as suggested.

Mr. DRAKE. I think it very well to amend that feature so that there can be no misunderstanding about it.

Mr. CAVE. If you will pardon me I will suggest an amendment. I have talked to Mr. Drake and Mr. Ames on this subject, and they have told me to fight my battles here, and I don't care to be interrupted.

The CHAIRMAN. The gentleman declines to be interrupted. Proceed.

Mr. CAVE. On page 2, section 2 (reading):

"That all insurance companies, now or hereafter incorporated by authority of any general or special law of Congress will be subject to the provisions of this act," the Ames bill.

Therefore, again I say it bears out my statement that we are exempt only from that provision of section 56. That allows us to continue our business on the assessment plan only when we comply with the balance of the Ames bill.

Page 3, section 3 of the Ames bill—

That no insurance company shall make or negotiate within the District of Columbia a contract of insurance—

except as authorized by the provisions of this act, the Ames bill.

That is practically the same thing; showing all along that it was the object and purpose of the framers of the Ames bill to do away with assessment insurance of all kinds, and the amendment does not benefit the companies at all, because, if they are required to put up first the capital of \$200,000, they must raise it on stock to be issued by the company, and, secondly, if they are authorized to do that they would then do away with the assessment feature and put themselves in a class such as the old line companies have shown themselves to be.

Page 20, section 16, is a further evidence of this.

That if it appears to him—

that is, the superintendent of insurance—

that the capital of the domestic insurance company is impaired to the extent of one-fourth or more on the basis fixed in section ten, he shall notify the company that its capital is legally subject to be made good—

(which does not refer to capital stock)

and the company may thereupon make good its capital to the original amount by assessment of its stock.

Again, I say that it is the intent of this bill to do away with assessment insurance.

Shares on which such assessment is not paid within sixty days after demand shall be forfeitable and may be canceled by the vote of the directors and new shares issued to make up the deficiency.

Now, such an association as the Masonic Mutual Relief, of Washington, D. C., that has no capital stock, would be compelled under the provisions of the Ames bill—and it has not been amended, and neither has there been any suggestion made by any former speaker that amendment should be made to that section—that company would be compelled to retire. That is the Masonic Mutual Relief of Washington, D. C., a company in which I happen to hold a policy. That association sells insurance at about 20 per cent less to the insured than any old-line capital stock company, and at the same time maintains the same reserve that is maintained by any old-line New York capital stock company. To be exact, gentlemen, I wish to quote the figures. At the age of 35 the premium is \$23.02 for what is called a whole life policy in Masonic Mutual. The Equitable Life, of New York, charges \$28.11, guaranteeing to the insured no more protection, no more security, than that guaranteed by the Masonic Mutual Relief, of Washington, D. C., which is intended to be prohibited from conducting business under the provisions of the Ames bill. And that \$28.11 is within a few cents of what is charged by other level-premium capital stock companies. I see no reason why a citizen of the District of Columbia should be excluded from the right, or deprived, rather, of the right to purchase insurance of that kind when he is getting absolutely the same protection that is given him by a company that charges him 20 per cent more.

Page 118, section 110, of the Ames bill would also have to be amended if the intention of Mr. Ames and Mr. Drake is to be carried out, namely, allowing these assessment companies such as I represent to continue to do business, provided this amendment allows them to do so, as they claim it does (reading):

SEC. 110. That the following sections of the act to establish a code of law for the District of Columbia, approved March thrid, nineteen hundred and one, as amended, and so far as inconsistent therewith, are hereby repealed: Section six hundred and forty-one and sections six hundred and forty-five to six hundred and fifty-seven, inclusive.

That repeals every line, every letter of insurance law of this District. Therefore we become, as I say, amenable to the provisions of the Ames bill, and this bill only, with one exception, that we are allowed to continue to issue policies on the assessment plan, provided we comply with all other provisions of the Ames bill, which is to do a sick, accident, and death benefit business, as the company I represent and 14 others are doing in the District of Columbia. But, first, in order to do a sick and accident business we have to have \$200,000 in approved securities; secondly, to do a death-benefit business or life insurance, \$100,000—in the aggregate \$300,000—in order to conduct a sick, accident, and death-benefit business, upon which the liability is very small: but in order to do an old-line level-premium business, upon which the liability is much greater, we would only be required to have \$100,000 to start with. The difference is three times as much for this small class of business.

I will say now, gentlemen, that there has been a great deal said here with regard to the expense of this class of business. The amount or per cent of the gross collections as compared to that returned to the people, which is shown to be about 25 per cent—these companies are young, the expense of procuring new business is great, equally as great in this class of business as it is in old line,

and a further fact why their expense is great is this: It requires practically nothing to embark in business. The agents acquire knowledge of the business by working for a company, and then if they see fit they embark in business for themselves and proceed to twist the policy holders from the old to the new company. When the insurance department was created there were 5 local companies, I believe, doing business. Now, the superintendent says there are 14. There has been a great deal of publicity given this kind of business on account of the conflicting rulings of the insurance department. The superintendent says there are 14. I know of several not known or recognized by his department. There was a company on F street, between Sixth and Seventh, that after doing business there awhile moved away, and the company is now run by an individual agent, and his residence is his office.

There was also a statement made here the other day that the capital stock of these companies runs from \$1,000 to \$5,000. The capital stock of the companies incorporated in the District of Columbia doing or attempting to do insurance business runs from \$1 to \$20,000. The company I represent, the American Home Life, has a capital stock of \$20,000 with between \$40,000 and \$50,000 assets.

So I submit, gentlemen, that in view of the fact that the first insurance code, or attempt at insurance law for this District, was an act of Congress in 1887 that authorized the existence of this kind of insurance. There was one special section in that act that exempted these companies from the operations of any other law. That was also recognized in the code of law for the District of Columbia in January 1, 1902, section 653, which provides for assessment companies such as I represent. H. R. 19154 should receive the approval of your committee and be acted on as an individual measure.

There has also been something said here with regard to the trouble that these companies have had with the superintendent of insurance, and Mr. Curry went so far as to state that these companies—leaving the impression that all of them—had refused to make annual reports. I challenged that statement as being erroneous.

MR. CURRY. I beg your pardon, I said some of the companies; three of them.

MR. CAVE. Well, the company I represent did first make the report, as required by Mr. Drake, which was entirely uncalled for, but made it in detail, and not within the meaning of this statute or the authority given him by this statute; but in his opinion only the trouble seems to have come about by Mr. Drake attempting to substitute his opinion in lieu of law. I wish to explain what I mean by that. These companies paid 1½ per cent on what they term their net premium receipts. It is claimed, however, by the best attorneys of Washington, a few of them, at least, that the law did not contemplate taxing the assessment of these companies, and in order to explain that I will read section 653 of the code of law of the District of Columbia.

SEC. 653. Assessment companies. Insurance companies or associations transacting the business of life insurance on the assessment plan, organized under the laws of the District of Columbia, or of any State of the United States, and doing business in said District, shall not be required to comply with the provisions of the next preceding section in regard to its assets; but such assessment companies or associations shall be required, as a condition of license to do business in said District, to file annually in the month of January with said superintendent a sworn statement setting forth that they are paying, and for

the twelve months next preceding have paid, the maximum amount named in their policies or certificates of membership when and as the same become due and payable, and that one assessment upon their members is sufficient to pay the maximum amount for such certificate or policy issued, and such other information as he may require. Such assessment companies or associations shall also furnish said superintendent evidence that they hold an emergency or surplus fund as a guarantee for the payment of future death claims when the same is required by the charter or constitution of the company or association; and any such company or association licensed to do an insurance business refusing or neglecting to furnish such certificate shall have its license to do business in the District of Columbia revoked; but the provisions of this section shall apply only to associations transacting life insurance upon the assessment plan.

Now, gentlemen, the provision providing for the payment of taxes says that the company shall pay $1\frac{1}{2}$ per cent on its net premium receipts. The law sets up quite a distinction between a premium and an assessment. In other words, they are each defined in the law. So long as there is a difference between assessment and premium we contend Mr. Drake's ruling is wrong. But in order to keep peace with the superintendent of insurance we agreed to in some way or other calculate or figure what the net assessment was, and I think the first year we paid $1\frac{1}{2}$ per cent on what we mutually agreed to be the net. That of course encouraged the superintendent to come at us for more. He showed a disposition to be rather exacting and claimed that net meant gross, and thereupon we should pay on the gross assessments, having absolutely no law for it; but the corporation counsel, who ruled in favor of us the year previous, had died, and had been criticised by reason of making that ruling as being a blacksmith, and the man who succeeded him agreed with the superintendent, said that net meant gross, and we must pay it. Like little lambs we did pay it for one year, or the second year. I think I am more responsible for refusing to accept that construction of the law the third year than any other individual. I said our company would not submit to such a ruling, knowing it to be illegal. We therefore tendered Mr. Drake our annual report complying with section 653, in answer to which we received a letter, which I think I can quote.

DEAR SIRS: I have received on such and such a date your annual report complying with section 653 of the code of law for the District of Columbia, for which I thank you.

THOMAS E. DRAKE.

Superintendent of Insurance.

AMERICAN HOME LIFE INSURANCE COMPANY,

Washington, D. C.

Now that, he afterwards found, was a mistake on his part to acknowledge that he had received the report, and secondly, that it complied with the law. He then fooled around for eight or ten months trying to find some place to catch hold of us, and he threatened in an article in a newspaper to arrest the officers of these companies and cited the fine, which would be \$20 a day, giving us ten days from that date in which to comply—not with the law, but with his opinion. Before the ten days expired we mandamusd the superintendent of insurance, and that case is pending in court to-day.

That, I think, explains in detail all desire on the part of this company to evade the law.

Now, gentlemen, as I say, if you attempt to include this kind of insurance in the Ames bill under that one amendment it means death

to most of these companies. But on the other hand, I claim if some measure similar to those contained in H. R. 19154 becomes a law this business can be done with from 30 to 50 per cent less cost to the insured and with equal security to the insured for this reason. The agents of these companies will be prohibited from starting a company of their own as they now can, requiring no capital to do so, and will persuade the policy holders to leave the former company and go with them. Now, that means an additional cost to the company to get other members in their place, also a cost which is greater than the cost to get new members, in an endeavor to save the old members. The class of people we insure are servants, laborers, and children—people that can not get insurance in such companies as the Bankers' Life for this reason. Their minimum age (Bankers' Life) is 21 years; their minimum amount of insurance is \$2,000; the first cost to the insured is \$2 per hundred, or \$20 a thousand, as I understand it; and they do not insure laborers, neither do they insure servants, females, or anything under the age of 21.

Therefore the class of people we insure would be excluded from insurance in that kind of a company—also, in any old-line company—because they do not cater to that class of people. And for two reasons: The people, if they were willing to insure in them could not pay the premiums. There is a little difference in the amount paid back to these people as compared with the amount received between the old-line companies and these companies I am speaking about. In old-line companies a person will pay by check without cost to the company for collection. We have to pay our agents 15 per cent for collecting these premiums, as long as the agent collects them. That, of course, is a cost which the old-line companies do not have to contend with, and accounts for the difference between 25 per cent for the sick and 30 or 35 per cent for the old-line of the gross premiums that are paid back to the people, and for the further reason that these companies are young, are operating under no legal protection, and anyone can embark in business, and there is no protection either to the company or the insured.

Mr. DE ARMOND. Within what limits do you issue policies?

Mr. CAVE. Five hundred dollars is the largest issued by any company that would be affected by the measures of this bill.

Mr. DE ARMOND. I am talking about your business as you have been running it—within what limits have you been issuing policies?

Mr. CAVE. In the District of Columbia.

Mr. DE ARMOND. You do not understand my question. I asked within what limits you have been issuing policies.

Mr. CAVE. In age, do you refer to?

Mr. DE ARMOND. No; in amount.

Mr. CAVE. Five hundred dollars has been the maximum.

Mr. DE ARMOND. What has been the minimum?

Mr. CAVE. About a dollar on a child, a dollar per week sick benefit; it would be well to explain—

Mr. DE ARMOND. About what rate or premiums do you charge?

Mr. CAVE. For an assessment of 25 cents—

Mr. DE ARMOND. What is the smallest assessment?

Mr. CAVE. Five cents.

Mr. DE ARMOND. From 5 cents to what?

Mr. CAVE. About 30, 35, or 40 cents.

Mr. DE ARMOND. A week?

Mr. CAVE. Yes. For a payment of 20 cents the insured is entitled to \$5 per week when sick, \$5 per week when disabled by accident, and \$50 at death. Also some of these companies do issue a straight life policy, of which I have a copy.

Mr. DE ARMOND. Is there any limitation in time as to that? Suppose a person takes out an insurance policy to-day and is injured or taken sick to-night.

Mr. CAVE. He is entitled to one-fourth of the benefit as provided for in his policy. That, too, accounts for the small per cent of the gross premiums having been paid back to these people, because there is not, I dare say, one company that will be affected by this bill that has been in operation three years or more, that has not had a part of its agents leave and start up another company and attempt to destroy, and in many cases succeeded in destroying, the first company's business; and in addition to that a third company has started from the company that branched out from the first company; it is the endless chain. Without legislation of some kind on this subject in five years the business will be destroyed.

Mr. DE ARMOND. A man has a choice between acting as agent and putting up a dollar or so and acting as a company?

Mr. CAVE. Yes; he can be an agent to-day, and a president to-morrow, and a bum the day after to-morrow.

Mr. DE ARMOND. Have you any statement you care to submit showing the amount of business you have been doing; how much paid out and how much taken in every year?

Mr. CAVE. I believe that has been furnished the committee.

Mr. DE ARMOND. You do not represent the same company?

Mr. CAVE. I represent one of the companies that Mr. Davis is attorney for and has given the information you are asking.

Mr. DE ARMOND. I am talking about the business that your company has done—how much you are taking in and how much you are paying out.

Mr. CAVE. The older the company—business that has been in a company a year or more is harder to disturb.

Mr. DE ARMOND. I am not talking about whether it is disturbed or not; what I am asking is whether you have some figures that will show us something about how much you have been taking in each year and how much you have been paying out, and how much you have been paying to yourselves?

Mr. CAVE. Well, if you will confine yourself to one particular question.

Mr. DE ARMOND. I will confine myself to anything. I am asking you whether you have any figures showing how much you have been taking in, how much you have been paying out in benefits, and how much you have been paying to yourselves?

Mr. CAVE. I say that has been answered; about 25 per cent is the average amount paid back to the policy holder.

Mr. DE ARMOND. That is not what I want.

Mr. CAVE. No; I haven't those figures.

Mr. DE ARMOND. If you have any figures I would like to know how many thousand dollars you have had paid in, and how many thousand dollars you have paid out, and how many thousand dollars your officers receive in salaries.

Mr. CAVE. I have not those.

Mr. DE ARMOND. You can not give those figures, then?

Mr. CAVE. There is no salary of any officer that will be affected that I know of that exceeds \$2,000 a year, and then he is giving his entire time and attention to the business.

Mr. DE ARMOND. How many people are actively engaged in the management of your company?

Mr. CAVE. Four officers; one of them is manager.

Mr. DE ARMOND. Four salaried officers?

Mr. CAVE. No; only one of them is salaried, and that is the man that is giving his entire time to the business.

Mr. DE ARMOND. The others get no pay?

Mr. CAVE. Absolutely none, except for attendance as directors.

Mr. DE ARMOND. They get pay for that?

Mr. CAVE. Yes; a very nominal amount.

Mr. DE ARMOND. Where is the stock held?

Mr. CAVE. By these four officers.

Mr. DE ARMOND. In what proportions?

Mr. CAVE. Well, it is divided among the four, not equally.

Mr. DE ARMOND. That is what I was thinking; about how is it divided?

Mr. CAVE. I don't know that it is necessary to state in detail.

Mr. DE ARMOND. No, it is not necessary to state anything. I was asking you, and I should guess that one man held most of the stock, and that the holdings of the other three are nominal——

Mr. CAVE. That is entirely wrong.

Mr. DE ARMOND. That is what I would guess, and you ought to be able to say what is correct.

Mr. CAVE. Because the man that does the work——

Mr. DE ARMOND. I am guessing that in the absence of a statement and your declining to make it. I ask you whether that is not substantially true—that the man who gets the salary is really, to all intents and purposes, the company, and the other men simply nominal holders of stock?

Mr. CAVE. That is not necessarily so.

Mr. DE ARMOND. I am not asking whether it is necessarily so or not, but whether it is not a fact?

Mr. CAVE. Not to my knowledge.

Mr. DE ARMOND. Do you know anything about how much stock each one owns?

Mr. CAVE. I do, indeed.

Mr. DE ARMOND. Which one of these four are you?

Mr. CAVE. I don't know that I would be doing justice to myself to answer the question.

Mr. DE ARMOND. Of course, I don't want you to answer the question if you do not feel that you can do yourself justice; if that is so, you can decline to answer it.

Mr. CAVE. I think that involves a matter that is purely a matter of private affairs of the corporation.

Mr. DE ARMOND. Exactly; of course you do not need to answer it; but I am asking it, and asking it upon the theory that whoever is the managing man of your company is really the company, and the others are practically figureheads. Now, I don't know anything about this; that may be incorrect, and you do know about it.

Mr. CAVE. I submit that assuming your conclusions—your suspicions, rather—are well founded, that if this man is a practical insurance man and giving his entire attention and receiving for his services less than \$2,000 a year, he is entitled to it.

Mr. DE ARMOND. And you decline to answer anything about how the stock is held in your company?

Mr. CAVE. Yes; I do, because I am a stockholder in several companies. I am vice-president of one company operating in South America.

Mr. DE ARMOND. Let me ask you in how many companies of this kind you are a stockholder?

Mr. CAVE. Several.

Mr. DE ARMOND. Several is indefinite. Do you say that you do not know how many you are a stockholder in?

Mr. CAVE. I know, but I don't care for everybody to know my private business.

Mr. DE ARMOND. Are you an active officer in more than one?

Mr. CAVE. I am vice-president in one operating in South America.

Mr. DE ARMOND. I am not asking you about that or about the South American business; I am asking you about this insurance business in the District of Columbia. Are you an active officer in any more than one of these industrial insurance companies in the District of Columbia?

Mr. CAVE. No, sir.

Mr. DE ARMOND. Have you stock in more than one of them?

Mr. CAVE. I said I had.

Mr. DE ARMOND. You said several, I believe.

Mr. CAVE. Yes, sir.

Mr. DE ARMOND. As to that, would you indicate about how much stock you have in any of those, except the one you are here representing?

Mr. CAVE. I would not.

Mr. DE ARMOND. I will ask you whether you have not merely nominal stock—

Mr. CAVE (interrupting). I think I answered that when I said I would not.

Mr. DE ARMOND. Well, I will ask you whether you are not a figurehead stockholder in several other companies, and whether active men from other companies—salaried men—are not figurehead stockholders in return in your company?

Mr. CAVE. I know of no such figureheads, sir.

Mr. DE ARMOND. Then you hold a considerable amount of stock in each one of these other companies?

Mr. CAVE. I did not say so.

Mr. DE ARMOND. What amount of stock—what portion would you say a man ought to own in order to rise above the dignity of the figurehead stockholder?

Mr. CAVE. That is an impractical question.

Mr. DE ARMOND. What I would like to find out, and perhaps the committee would, too, is as to what ones of these companies are real companies, and what ones of the companies are mere snide companies, if any, organized by one man who runs the whole thing and gets all the money, and has associated with him some figurehead stockholders?

Mr. CAVE. I would prefer your getting that information from people conducting snide companies; probably my judgment may not be sufficient.

Mr. DE ARMOND. I am not asking for your judgment; we can get along without that.

Mr. CAVE. That is what it would be—

Mr. DE ARMOND. But asking you for facts. If you will give us the facts we will excuse you from giving your judgment.

Mr. CAVE. There are some companies here doing business, I understand, with practically no assets. We have enemies enough, and I would not want to name them—

Mr. DE ARMOND. No; I am not asking about assets—what I am asking about is this: Whether you know of any companies here that, so far as the substantial ownership of stock is concerned, consists of a salaried man, or men, in the company, with the others merely nominal stockholders.

Mr. CAVE. Leaving out my own company, I could not intelligently answer that question, and with regard to my own company I refuse to answer the question; and so far as snide companies are concerned, you will have to tell or define to me what, in your opinion, constitutes a snide company before I could answer that.

Mr. DE ARMOND. Really, as to that I don't know whether it would be worth while. While you may have difficulty in giving a definition I think probably you understand it.

Mr. CAVE. I do in my opinion; yes.

Mr. DE ARMOND. Yes. Another question. Are you the salaried man of your company?

Mr. CAVE. I am.

Mr. DE ARMOND. But you decline to say whether you are the man that owns substantially all the stock or not?

Mr. CAVE. I do.

Mr. DE ARMOND. You decline to say whether you are practically the whole company, so far as interest and money are concerned?

Mr. CAVE. I say I am not in that respect.

Mr. DE ARMOND. I did not say all, I said substantially; that is what you wish us to be very careful to protect and preserve in the District—a company about the stock of which you refuse to give information, a company concerning the stockholding of which you refuse to say whether you are substantially the sole stockholder and sole beneficiary; and respecting that you wish us to take care of it.

Mr. CAVE. Not in that light.

Mr. DE ARMOND. Put it in your own light.

Mr. CAVE. I do say that I consider that a matter that concerns the private operations of the corporation. I would also consider a man that would disclose that kind of information in a private corporation would be unjust to his charge, unfair to the corporation and to the other members of the corporation.

Mr. DE ARMOND. Now, will you explain to the committee why it would be unfair and unjust—

Mr. CAVE. In my opinion—

Mr. DE ARMOND. Will you explain to the committee why it would be unfair and unjust to indicate to the committee anything about who the stockholders of your corporation are and something about their holdings?

Mr. CAVE. I am giving them now: That I think this committee is endeavoring to get such information as will enable them to prepare legislation both just to the corporation and the insured that is insuring in these corporations, and that your questions for the last fifteen minutes have absolutely nothing to do with bringing that kind of information before this committee.

Mr. DE ARMOND. Then you assume to know what kind of information the committee wishes, and you assume to decide when a question is asked you by a member of this committee whether it shall have the information that that will bring out?

Mr. CAVE. I do, yes.

Mr. DE ARMOND. And yet you want the committee to carefully act to preserve such a company as you have described yours to be?

Mr. CAVE. I have not described my company; I have refused to describe it, that is the difference.

Mr. DE ARMOND. Such a company as you refuse to give any particulars about.

Mr. CAVE. Yes.

Mr. DE ARMOND. Do you refuse because those particulars would be damaging to your company?

Mr. CAVE. I think that statement is not just.

Mr. DE ARMOND. Very well, correct it.

Mr. CAVE (continuing). In view of the fact that I have stated that I consider your questions dealing with a subject that is a matter which belongs simply to the private operations of a corporation of this kind, and since there are no provisions in any bill before this committee that deal with the subject which you are now discussing, I can not see why you should solicit that information from me in the way you are doing it.

Mr. DE ARMOND. Then unless you can see why particular information would be desired by a member of the committee you would decline to give it?

Mr. CAVE. And I would answer further by saying that if you can show me where an answer to your question as I imagine you desire to have it answered would be of any value to this committee upon the subject they are considering, I will answer it.

Mr. DE ARMOND. I don't desire to have it answered any particular way, I do not desire any particular kind of an answer, but I have asked you certain questions and I do not understand any good reason for refusing to answer them. There may be some.

Mr. CAVE. We will assume that back in Missouri you were conducting an insurance company and I would go to your State and ask such a question as you have asked me. I would ask you what the answer would be.

Mr. DE ARMOND. I will answer that if I were conducting a business which I could not afford to disclose, an institution without merit, I would adopt your course; but if I were conducting an institution with honest purposes, and whose methods I had no reason to be ashamed of, and would be glad to have known, I do not see why I should take your course about it.

Mr. CAVE. I only have to say, in reference to that statement, that our opinions are not together on that.

Mr. DE ARMOND. I notice they do not quite coincide. May I ask you how much capital stock your company has?

Mr. CAVE. \$20,000.

Mr. DE ARMOND. Paid up?

Mr. CAVE. Yes.

Mr. DE ARMOND. In what was it paid up?

Mr. CAVE. In money.

Mr. DE ARMOND. When was it paid in?

Mr. CAVE. The larger part in 1903.

Mr. DE ARMOND. When was the company organized?

Mr. CAVE. In the spring of 1893.

Mr. DE ARMOND. This was paid in by the stockholders then?

Mr. CAVE. A little over thirteen years ago.

Mr. DE ARMOND. This was paid in in 1903 by the stockholders?

Mr. CAVE. Yes; the larger portion of it. The capital stock was increased then.

Mr. DE ARMOND. I suppose you would not want to disclose what dividends have been paid?

Mr. CAVE. Not a dollar.

Mr. DE ARMOND. What induced these people, if you know—perhaps that would be disclosing a dangerous secret, too—to put in the main part of this stock in 1903, when for something like ten years it had not paid a dollar in dividends?

Mr. CAVE. That desire that induces all thrifty, intelligent Americans to put their money in institutions that they believe will be of benefit to them and their fellow-countrymen.

Mr. DE ARMOND. After ten years' demonstration that it would not benefit them at all?

Mr. CAVE. That is not their fault, sir; they endeavored to do the best they could, and they succeeded in increasing the assets nearly \$50,000. If they were desirous to have declared dividends, they could have declared dividends of all over and above 75 per cent of that capital stock, which would have been the difference between \$15,000 and very nearly \$50,000.

Mr. DE ARMOND. Who are the officers of that company—unless that is one of those secrets which you do not wish to disclose?

Mr. CAVE. Four citizens of Washington.

Mr. DE ARMOND. I may have asked you whether they were four citizens of Washington; I may have asked you, as I actually did—

Mr. CAVE. You did not ask their names.

Mr. DE ARMOND. Do you say that that is an answer to the question?

Mr. CAVE. Yes.

Mr. DE ARMOND. If I ask you who you are, do you think it is an answer to say you are a citizen of Washington?

Mr. CAVE. I do; you seem to be very technical, and I like to be, too.

Mr. DE ARMOND. You understood me to be trying to get at the geography of the matter and to ascertain where these men lived?

Mr. CAVE. Is it the names you wish to know?

Mr. DE ARMOND. Have you any doubt of it?

Mr. CAVE. I did have.

Mr. DE ARMOND. Yes; it is the names.

Mr. CAVE. James H. Vermillia, president; Charles T. Yoder, secretary; James H. Caton, vice-president, and G. W. Cave, myself, is treasurer and also manager, giving my entire attention to the business.

Mr. DE ARMOND. And the other officers, I believe you said, did not give their attention and time to the business?

Mr. CAVE. They do not, except in a general way as directors.

Mr. DE ARMOND. How often does your directory meet?

Mr. CAVE. Once a month; they are in the office every day or two, all of them, and some of them are in there oftener.

Mr. DE ARMOND. Would it be a disclosure that you would not like to make if you would say how much salary the directors get?

Mr. CAVE. They are paid—it is in the nature of attendance, but it is \$25 per month each as directors.

Mr. DE ARMOND. For attending one meeting?

Mr. CAVE. The directors' meeting; and that includes all they do, whether it is three times a day or four times a day; or, if we have to go before our superintendent, they go without additional compensation.

Mr. DE ARMOND. Each director gets that?

Mr. CAVE. Yes, sir.

Mr. DE ARMOND. That includes yourself?

Mr. CAVE. Yes, sir.

Mr. DE ARMOND. Is that included in your \$2,000?

Mr. CAVE. I never said I was getting \$2,000.

Mr. DE ARMOND. You did not say how much you were getting?

Mr. CAVE. No, sir.

Mr. DE ARMOND. I suppose that would be an embarrassing question?

Mr. CAVE. I don't know that that will furnish any valuable information. If you insist—

Mr. DE ARMOND. No; I do not insist on anything. I will venture to ask how much pay you are getting.

Mr. CAVE. I object to answering the question.

Mr. DE ARMOND. That is all right. Now, will you state why you object?

Mr. CAVE. Because I think it is a matter that concerns the company and myself.

Mr. DE ARMOND. Why did you not object to giving the pay of the directors? That concerns the company and themselves. You exposed the directors and you refuse to expose yourself.

Mr. CAVE. I exposed myself with the directors.

Mr. DE ARMOND. Why did you expose the directors of the company?

Mr. CAVE. Well, I wanted to please you in part.

Mr. DE ARMOND. Oh, yes; but you do not care to enlighten me as to what you receive?

Mr. CAVE. I do not wish to be understood as impertinent.

Mr. DE ARMOND. I do not understand it that way.

Mr. CAVE. I hardly think you do. In other words, I believe we are together on the subject; you are trying to find out, in my opinion, things that are not of interest to you or this committee, and I deem them to be so, and therefore I answer them as I do.

Mr. DE ARMOND. You determine whether a matter I ask about is of interest to me or not?

Mr. CAVE. I say that in my opinion.

Mr. DE ARMOND. It is very kind of you, and I suppose you can determine that better than I can; it is very kind of you to determine what is of interest to me and the committee.

Mr. CAVE. I must have some reasons—

Mr. DE ARMOND. Some people think a bad reason is better than none, but I do not agree with them.

Mr. CAVE. In my opinion it is a good reason.

Mr. BIRDSALL. Have you finished, Judge?

Mr. DE ARMOND. Yes, sir.

Mr. BIRDSALL. Does your company make any report at all to the commissioner?

Mr. CAVE. Yes, sir; they do annually since the department was created.

Mr. BIRDSALL. What does your annual report cover?

Mr. CAVE. We for two years did file the report which Mr. Drake furnished us, which is compiled by the united insurance departments of the various States.

Mr. BIRDSALL. What does your last report furnished show?

Mr. CAVE. It conforms to the requirements of the District insurance law.

Mr. BIRDSALL. I don't know that law; please state it in a general way.

Mr. CAVE. It first requires us to show that one assessment upon our members is sufficient to pay the maximum amount named in the policies, and that we have paid each and every claim that came due against the company, and that the funds on hand are sufficient to meet any and all obligations.

Mr. BIRDSALL. That is what your last annual report shows?

Mr. CAVE. Yes, sir.

Mr. BIRDSALL. Have you any objection to making a statement as to your transactions for the last year, showing the amount collected and paid out for death, sick, and accident benefits?

Mr. CAVE. I don't know just what they are.

Mr. BIRDSALL. Have you any objection to making such a statement, so that it can go into the record?

Mr. CAVE. No; but I believe—

Mr. DAVIS. He wants that in writing.

Mr. CAVE. I understand you now; I am perfectly willing to do that, sir.

Mr. BIRDSALL. I wish you would make such a statement and hand it to the stenographer.

Mr. CAVE. Here are two forms of policies that have been made out. [Handing them to Mr. De Armond.]

Mr. DE ARMOND. That would be rather in the nature of a concession. There are so many things I would like to know that you are not disposed to tell me that I believe I will relieve you of that. You can leave them with the stenographer, though.

Mr. CAVE. If you will give me a good reason—

Mr. DE ARMOND. What would that be worth to you?

Mr. CAVE. In my opinion a good deal.

Mr. DE ARMOND. I tried to make it clear a little while ago that we are not asking you so much for your opinion as for facts. The truth is, you substitute opinions for facts.

Mr. CAVE. I don't think so.

Mr. DE ARMOND. Then you do not substitute anything for them, because you did not give the facts.

The State of Virginia requires companies such as described in H. R. 19154 to deposit with the State treasurer \$10,000 as security to policy holders and as an evidence of good faith on the part of the organizers of a company when embark-

ing in business. The State of Wisconsin, \$25,000, with an annual increase of \$5,000 until \$100,000 is on deposit for the same purpose.

The State of Maryland, \$50,000 deposited with the treasurer for the same purpose. Pennsylvania statutes provide that a company shall have in their possession \$25,000 worth of approved securities for the same purpose. These deposits are for identically the same kind of companies that are dealt with in H. R. 19154; therefore, such being the legislative policy of the States, the wisdom of which seems to have been approved by long experience in insurance affairs, it would seem to be the duty of the Members of Congress to pass similar laws that will furnish similar protection to the citizens of Washington for the further reason that H. R. 19154 has been approved by the superintendent of insurance of the District of Columbia, the Commissioners of the District of Columbia, and by the majority of the insurance companies of the District of Columbia, and it is conceded by everyone, including the Members of Congress who have become familiar with the insurance laws of the District of Columbia, that the existence of the present insurance laws are nothing short of a scandal and are of serious concern to every citizen of Washington, more especially to the poor washerwoman, servant, and laborer who are persuaded to take policies in some of these concerns that have nothing to guarantee the payment of the benefits provided for in their policies. The payment of these benefits are in some cases optional with the officers of these concerns.

Should Congress fail to pass some insurance bill at this session it would encourage the wild-cat schemes to furnish really less protection than they are now furnishing, for the fact that the failure of Congress, after having this matter explained as thoroughly as it has been, to act in the matter would be in a measure an approval of such ambiguous, inadequate insurance laws as now exist in the District of Columbia, and also leave the insurance commissioner in a position where he would be forced to issue license to the many applicants now pending in the department of insurance, regardless of whether they are or are not in possession of securities or assets of any kind to guarantee the performance of their contracts with their insured, and would also invite the formation of companies with every three or four agents that are now engaged in the life-insurance business in the District of Columbia.

Federal supervision, or authority given a corporation under a Federal charter, usually means something, and the public so understand, but I submit that it has little significance when applied to insurance in the District of Columbia, when a company can incorporate as did the Congressional Life Insurance Company of this city, December 6, 1905, with \$1 capital stock, with the authority given it to do any and all kinds of life-insurance business, and there is no provision in the insurance law of the District of Columbia that will prohibit this company from doing the kinds of business authorized to be done by its charter; neither is there any provision that requires them to furnish any protection or guarantee to the insured that their contracts will be met when the liability occurs.

SCHEDULE D.—*Charter of Congressional Life Insurance Company.*

CERTIFICATE OF INCORPORATION.

Know all men by these presents:

That we, the undersigned, a majority of whom are residents of the District of Columbia, desiring to form a company under subchapter 4 of the incorporation laws of the District of Columbia, as provided in the Code of Law of the District of Columbia, enacted by Congress and approved by the President of the United States, do hereby certify:

First. That the corporate name of this company shall be Congressional Life Insurance Company, and the object for which it is formed is to carry on a general life, health, and accident insurance business in the District of Columbia and elsewhere, with general powers to do all things incidental thereto and in furtherance thereof, and in general to do and to perform every lawful act and thing necessary or expedient to be done or performed for the efficient and profitable conducting of said business as authorized by the laws of Congress, and to have and to exercise all the powers conferred by the laws of the District of Columbia upon corporations.

Second. The term of its existence shall be perpetual.

Third. The amount of the capital stock of the company shall be \$1, divided into 100 shares of the par value of 1 cent per share.

Fourth. The concerns of the company for the first year shall be managed by a board of three directors, namely, James H. Meriwether, James E. Evans, and George E. Terry.

Fifth. The operations of the company are to be carried on in the United States of America, and the main office of the company shall be at 1008 F street NW., in the city of Washington, and the resident agent is George E. Terry.

This corporation reserves the right to amend, alter, or change any provision contained in this certificate of incorporation in any manner prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation.

In witness whereof we have hereunto affixed our signatures and seals this sixth day of December, A. D. 1905.

JAMES H. MERIWETHER. [SEAL.]

JAMES E. EVANS. [SEAL.]

GEORGE E. TERRY. [SEAL.]

UNITED STATES OF AMERICA,

District of Columbia, to wit:

I, S. A. Terry, a notary public in and for the District aforesaid, do hereby certify that James H. Meriwether, James E. Evans, and George E. Terry, parties to the annexed certificate of incorporation of the Congressional Life Insurance Company, bearing date on the 6th day of December, 1905, personally appeared before me in the District aforesaid, the said James H. Meriwether, James E. Evans, and George E. Terry, being personally known to me to be the persons who made and signed the said certificate, and severally acknowledged the same to be their act and deed for the purposes therein set forth. Witness my hand and seal this 6th day of December, 1905.

[SEAL.]

S. A. TERRY.

Notary Public, D. C.

DISTRICT OF COLUMBIA,

OFFICE OF THE RECORDER OF DEEDS,

December 19, 1905.

This is to certify that the foregoing is a true and verified copy of a certificate of incorporation, and of the whole of such certificate as received for record on the 6th day of December, A. D. 1905, 11.03 a. m.

[SEAL.]

R. W. DUTTON,

Deputy Recorder of Deeds District of Columbia.

Assuming for the purpose of argument that H. R. 19154 is not a model or complete insurance code within itself, it is contended by a great many that this session is so short that we will not have time to draft a model bill. This bill will unquestionably greatly improve the insurance situation in the District of Columbia and furnish ample protection to the policy holders of these companies, and also protection to the company in preventing their agents from starting companies and twisting or robbing the companies of their policy holders for which the agents have been fully paid for procuring.

There is every reason why this bill should pass. It has been approved by the Commissioners, the superintendent of insurance, the corporation counsel, and the majority of the insurance companies themselves, all of whom are familiar with the situation and the conditions as they exist, and are, therefore, more competent to determine what is best under the circumstances. If at some subsequent date it should be found that this bill is inadequate in any or all of its provisions, it can easily be amended; but there is no question but what it deals very thoroughly with the kind of insurance that is sought to be regulated by the measures of this bill, and, therefore, there is no reason why the bill should not become a law at this session of Congress, as there has been a great deal of labor and time given to the preparation of this bill and in the many efforts in the last two and a half years to have Congress pass it.

Mr. Cave submitted the following:

Incorporated under the laws of the United States in the District of Columbia.

No. 64536.

THE AMERICAN HOME LIFE INSURANCE CO.

The American Home Life Insurance Company, of Washington, D. C., hereby insures the life and health of the person herein designated as the insured, and agrees to pay the sick, accident, and death benefit stipulated in the following schedule, subject to the conditions, privileges, and provisions contained herein

and on the back hereof, which are hereby made a part of this contract. Said death benefit shall be payable to the beneficiary named in the application for this insurance or to the executors, administrators, or assigns of the person named as the insured in this policy, unless settlement shall be made under the provisions of article eight on the back hereof, at its home office, within one hour from the date of the surrender of this policy and the receipt book properly receipted, and upon receipt of evidence satisfactory to the company of the fact and cause of death of the said insured while this policy is in full force and effect, less any indebtedness to the company on account of said insurance.

Schedule above referred to.

Name of insured.	Age next birthday.	Weekly benefit.	Death benefit.	Premium.
John Doe.....	Years. 20	\$5.00	\$50.00	Cents. 20

If the insured shall die within six calendar months from the date hereof, the company will pay only one-fourth of the death benefit named herein. If the insured shall die after six months and within one year from the date hereof, the company will pay only one-half of said death benefit. After one year from its date the policy will be in force for the full amount of said death benefit.

One-fourth only of said weekly sick or accident benefit shall be payable in case of total disability, as described on the back hereof, within twenty weeks from the date hereof, and the full weekly benefit shall be payable according to the conditions on the back hereof after twenty weeks from the date hereof, provided however, that no more than five weekly benefits shall be payable in any period of six months, said six months to be calculated from the date of payment of the first weekly benefit. *Provided, also*, that the payment of one-fourth weekly benefits shall be counted as full weekly benefits in computing the number of weeks to be paid in any six months.

In witness whereof, the American Home Life Insurance Company, of Washington, D. C., has affixed its corporate seal, attested by the signatures of its president and secretary, this 21st day of May, 1906.

[SEAL.]

JAS. H. VERMILYA, *President.*

C. T. YODER, *Secretary.*

CONDITIONS.

1. *Period of grace.*—Should the insured die while the premium on this policy is in arrears for a period not exceeding three weeks (twenty-one days), the company will pay the benefit provided herein, subject to the conditions of the policy.

2. *This insurance is granted* in consideration of the premium hereinbefore stated, which shall be paid to the company, or to its authorized representatives, on or before every Monday during the continuance of this contract, and of any additional sum that may be required.

3. *Misstatement of age.*—Any benefit provided for in this policy may be adjusted for misstatement of age.

4. *Preliminary provision.*—No benefit will be paid on this policy for any disease or injury which the insured contracted, received, or incurred before the date hereof, nor unless on said date the insured was alive and in sound health and the first premium paid to the company.

5. *Suicide.*—Self-destruction by the insured, whether sane or insane at the time, within one year from the date hereof, shall limit the liability of this company to the return of the premiums paid on account of this insurance.

6. *Benefit* will not be paid for sickness caused by childbirth, diseases peculiar to females, or venereal disease in any form; or for sickness or accident resulting directly or indirectly from abortion, or any other criminal act or violation or attempted violation of law, or when engaged in a fight, affray, or riot.

The company shall pay only one-half benefit for disability caused by rheumatism.

7. *Alteration and waivers.*—No persons, except the president, secretary, or assistant secretary of the company can alter this contract or waive any condition, privilege, or provision thereof.

8. *Facility of payment.*—The company may make any payment of the death benefit provided for in this policy to any relative by blood or connection by marriage of the insured, or to any other person appearing to said company to be equitably entitled to the same by reason of having incurred expense in any way on behalf of the insured, for his or her burial, or for any other purpose, and the production by the company of a receipt signed by any or either of said persons, or of other sufficient proof of such payment to any or either of them, shall be conclusive evidence that such benefit has been paid to the person or persons entitled thereto, and that all claims under this policy have been fully satisfied.

9. *Revival of policy.*—If this policy is lapsed for nonpayment of premium, it may be revived, as provided in section 11, provided the premium is not more than one year in arrears.

10. *Policy, when void.*—This policy shall be void if there is in force upon the life of the insured a policy previously issued by this company, unless the policy first issued contains an indorsement, signed by the president or secretary authorizing this policy to be in force at the same time; or if any of the representations upon which this policy is granted are not true; or if the said premium shall not be paid according to the terms hereof. If for any cause this policy be or become void, all premiums paid hereon shall be forfeited to the company, except as provided herein.

11. *Policy canceled for nonpayment.*—Should any premium on this policy be twenty-one days overdue, the insurance is thereby canceled and shall not be reinstated until five weeks after date of payment to the company of all premiums due, provided all premiums accruing during said five weeks have been paid and the company furnished satisfactory evidence of the insurability of the person named herein. It is hereby agreed that all premiums so paid shall be received by the company on account of reinstatement. Should the company decline to reinstate the insured the amount paid on account of said reinstatement will be returned or tendered and this policy remain canceled.

12. *Payments of premiums.*—All premiums are payable at the home office of the company, but may be paid to any authorized representative of the company, but payments to be recognized by the company must be entered at the time of payment in the premium receipt book belonging with this policy. If for any reason the premium is not called for when due by an authorized representative of the company it shall be the duty of the insured, before said premium shall be in arrears three weeks, to bring or send said premium to the home office of the company or to one of its branch offices.

13. *The receipt book* belonging with this policy shall be exhibited to the authorized employees of the company, at any time upon demand, and before any claim for benefit under this policy will be recognized, said receipt book must be surrendered to the company.

14. *Weekly benefit* shall begin only on receipt by the company of the premium receipt book belonging with this policy and a written notice or application for benefit signed by the attending physician, and shall be due only after seven days from the date of receipt of said receipt book and notice or application, provided said physician shall furnish the company a certificate satisfactory to the company; said certificate to be made on a blank furnished by the company, containing questions all of which must be answered in full, showing that the insured had been totally disabled and confined to bed for the said seven days and that said confinement to bed was caused by sickness or accident not exempted herein. If benefit is claimed for an accident, said certificate shall show that the insured was totally disabled for the said seven days. To entitle the insured to further benefit said notice or application and said certificate shall be furnished each and every week as aforesaid. It is further agreed that any officer of the company shall have the right to examine the insured, and if there is no surface indication of sickness or accident, or the insured refuses such examination there shall be no benefit due or payable hereunder.

15. *Limitation.*—No suit on this policy shall be maintainable against the company unless brought after one month and within six months next after the date of claim.

16. *If within the period* of one year from the date hereof the insured shall have any sickness or accident for which benefit would be payable, and a qualified physician in good standing shall certify such sickness or accident to be permanent or probably incurable, and any officer designated by the company approve the same, an amount equal to one-half the death benefit named herein will be payable; and if such sickness or accident should occur after one year from said date the full amount of said death benefit will be payable, and in

either event, upon such payment or the tender thereof, this policy shall cease and be surrendered to the company.

17. Service in war.—In event of sickness, accident, or death of the insured while engaged in, or in consequence of having been engaged in military or naval service in time of war, without the written consent of the company, signed by the president or secretary, the sum payable under this policy shall not exceed the amount of premiums paid hereon.

18. Incontestability.—This policy is incontestable from date of issue for the amount due, provided all premiums have been duly paid.

Incorporated under the laws of the United States in the District of Columbia.

No. 64538.

THE AMERICAN HOME LIFE INSURANCE CO.

The American Home Life Insurance Company, of Washington, D. C., hereby insures the life of the person herein designated as the insured, and agrees to pay the sum stipulated in the following schedule subject to the conditions, privileges, and provisions contained on the back hereof, which are hereby made a part of this contract. Said benefit shall be payable to the beneficiary named in the application for this insurance or to the executors, administrators, or assigns of the person named as the insured in this policy, unless settlement shall be made under the provisions of article seven on the back hereof, at its home office, within one hour from the date of the surrender of this policy and the receipt book properly receipted, and upon receipt of evidence satisfactory to the company of the fact and cause of death of the said insured while this policy is in full force and effect, less any indebtedness to the company on account of said insurance.

Schedule above referred to.

Name of insured.	Age next birthday.	Benefit.	Premium.
John Doe	20 years...	\$348.00	20 cents.

If the insured shall die within six calendar months from the date hereof, the company will pay only one-fourth of this sum. If the insured shall die after six months and within one year from the date hereof, the company will pay only one-half of this sum. After one year from this date the policy will be in force for the full amount.

In witness whereof the American Home Life Insurance Company, of Washington, D. C., has affixed its corporate seal, attested by the signatures of its president and secretary, this 21st day of May, 1906.

[SEAL.]

JAS. H. VERMILYA, *President*,
C. T. YODER, *Secretary*.

CONDITIONS.

1. Period of grace.—Should the insured die while the premium on this policy is in arrears for a period not exceeding four weeks (twenty-eight days), the company will pay the benefit provided herein, subject to the conditions of the policy.

2. This insurance is granted in consideration of the premium hereinbefore stated, which shall be paid to the company, or to its authorized representatives, on or before every Monday during the continuance of this contract, and of any additional sum that may be required.

3. Misstatement of age.—The benefit provided in this policy may be adjusted for misstatement of age.

4. *Preliminary provision.*—No benefit will be paid on this policy in case of the death of the insured before the date hereof, nor unless on said date the insured was alive and in sound health and the first premium paid to the company.

5. *Suicide.*—Self-destruction by the insured, whether sane or insane at the time, within one year from the date hereof, shall limit the liability of this company to the return of the premiums paid on account of this insurance.

6. *Alteration and waivers.*—No persons, except the president, secretary, or assistant secretary of the company can alter this contract or waive any condition, privilege, or provision thereof.

7. *Facility of payment.*—The company may make any payment provided for in this policy to any relative by blood or connection by marriage of the insured, or to any other person appearing to said company to be equitably entitled to the same by reason of having incurred expense in any way on behalf of the insured, for his or her burial or for any other purpose, and the production by the company of a receipt signed by any or either of said persons or of other sufficient proof of such payment to any or either of them shall be conclusive evidence that such benefit has been paid to the person or persons entitled thereto, and that all claims under this policy have been fully satisfied.

8. *Revival of policy.*—If this policy is lapsed for nonpayment of premium, it will be revived within one year from the date to which premiums have been paid, upon payment of all arrears, provided the company is furnished satisfactory evidence of the insurability of the person named herein.

9. *Policy, when void.*—This policy shall be void if there is in force upon the life of the insured a policy previously issued by this company, unless the policy first issued contains an endorsement, signed by the president or secretary authorizing this policy to be in force at the same time; or if any of the representations upon which this policy is granted are not true; or if the said premium shall not be paid according to the terms hereof. If for any cause this policy be or become void, all premiums paid hereon shall be forfeited to the company except as provided herein.

10. *Payments of premiums.*—All premiums are payable at the home office of the company, but may be paid to any authorized representative of the company, but payments to be recognized by the company must be entered at the time of payment in the premium receipt book belonging with this policy. If for any reason the premium is not called for when due, by an authorized representative of the company, it shall be the duty of the policy holder, before said premium shall be in arrears four weeks, to bring or send said premium to the home office of the company or to one of its branch offices.

11. *Limitation.*—No suit on this policy shall be maintainable against the company unless brought after one month and within six months next after the date of death of the insured.

Special privilege.

12. *Service in war.*—In event of death of the insured while engaged in or in consequence of having been engaged in military or naval service in time of war, without the written consent of the company, signed by the President or Secretary, the sum payable under this policy shall not exceed the amount of premiums paid hereon.

13. *Incontestability.*—This policy is incontestable from date of issue for the amount due, provided all premiums have been duly paid.

This policy, if not satisfactory to the insured, may be surrendered within ten days after its date at the home office and the premiums paid hereon will be returned to the insured.

The CHAIRMAN. Mr. Curry desires a few minutes to make an explanation. I will say, Mr. Curry, that before recess you spoke something about having some tables there, or that you would have some?

Mr. CURRY. Yes, sir.

The CHAIRMAN. If you will hand them to the reporter, we will incorporate them in your remarks.

Mr. Curry submitted the following:

BUSINESS OF 1903.

	Collected from members.	Paid back to members.	Paid for expenses.	Percentage of premiums paid to members.	Percentage of premiums used for expenses.
American Home.....	\$27,073	\$3,132	\$26,318	11½	88½
Capital City.....	27,062	10,866	16,186	40	60
Peoples' Mutual.....	14,304	3,281	11,118	23	77
Provident Relief.....	64,795	14,740	46,902	22½	77½
Royal Life.....	9,065	1,542	8,198	17	83
Union.....	12,404	2,972	8,581	24	76

Mr. CURRY. Mr. Chairman, I want to reply briefly to the reasons Mr. Cave gave for not furnishing a report and paying a tax and some criticism he made on the department's construction of the law. He says that 653 exempts them from the provisions of 652.

Mr. BIRDSALL. Do you think that is material? As I understand it, it is a matter between the companies and the departments and has been submitted to the court. I don't suppose the committee wants to pass on it one way or the other.

Mr. CURRY. I do not think it would have any bearing on your recommendation, and so I will let that pass.

That is all I desire to say at this time.

STATEMENT OF MR. CHARLES A. HARTMAN, REPRESENTING THE UNION INSURANCE COMPANY OF WASHINGTON, D. C.

Mr. HARTMAN. Mr. Chairman and gentlemen of the committee, I represent the Union Insurance Company, and all I desire to say in reference to that company is that I was requested to compile a statement of its business for the last four years. That has been furnished to the department of insurance, and I submit it. It can be verified.

(The statement submitted follows.)

Statement of business of the Union Insurance Company of Washington, D. C.

	Income.	Death claims paid.	Sick claims paid.	Per cent.	Men employed.	Officers' salaries.	Agents' salaries.
1902.....	\$6,254.36	\$156.25	\$1,080.25	20	8	\$3,748.00	\$2,954.90
1903.....	12,404.48	220.00	2,678.24	23	10	2,495.00	4,847.74
1904.....	23,202.10	834.43	5,388.92	27	16	6,717.50	8,253.58
1905.....	30,212.74	1,376.25	6,973.01	28	22	6,621.50	13,407.46

POLICY EXHIBIT.

	Policies written.	Insurance written.	Policies lapsed.	Insurance ceased to be in force.	Total policies in force at end of year.	Total amount of insurance in force.
1902.....	4,061	\$154,271.00	2,951	\$109,959.50	1,648	\$63,401.50
1903.....	4,843	183,607.50	3,867	144,221.50	2,624	102,886.50
1904.....	8,188	282,016.00	6,206	217,510.50	4,006	147,392.00
1905.....	7,466	303,775.50	6,314	252,567.50	5,938	198,000.00

Number of people who have received benefits, 2,406.

Mr. HARTMAN (continuing). These companies represent about 60,000 policy holders, and we were organized in 1901, and gave our first full year's report in 1902, because we were only in business about six months in 1901. I give it there in full, showing exactly the nature of our business and the nature of carrying it on. Our average premium collected from each policy holder is about 17 cents; the amount of insurance that that will purchase is \$43. That will conform very closely to our policies outstanding now—about \$43 is the liability on each policy in force issued by this company. That means a corresponding liability of \$4.30 sick benefit. As Mr. Brosnan said a while ago, he has been in business sixteen years. I have been in the business twenty-five years, and I can say that a person who applies for sick benefit will receive on an average three weeks for each individual case. Our company has paid out to 2,406 persons benefits since its organization. That is what we have paid. Now, taking it on that basis, of three weeks paid to each person, it means something like 7,000 claims that have been paid by the company since 1902.

I think that gives you about as clear an idea as I can convey of the nature of the business we do. We send our agents from house to house, and the cost, as these gentlemen have been telling you, is very great, simply because of the necessity of paying commissions to agents to collect the premium; paying commissions is one method, and other companies pay a small weekly salary, and then a commission of 15 per cent on the dollar for collecting the money at the homes of these people. Owing to the fact that we have had no protection in the District, and the competition having been very sharp among the local companies here for this business—I will not say particularly among the sick benefit companies that are doing business here, but the industrial straight life companies have sadly persecuted our business, and to a certain extent we insure a party this week and the following week we have lost him; the efforts of the agent have absolutely gone for nothing. Of course, it costs money to upset the efforts of others to take our insured away from us, and we have to contend with the fact that almost any time Congress may see fit to enact a law which will close these companies out of business, which of course makes it uncertain for persons to take a policy. Agents have to combat that from time to time, which causes an immense cost in getting business, and makes the cost of our business seem abnormally great.

Now, I will explain some features of this (referring to paper already filed and included in this statement). In 1902 we issued 4,061 policies. In the same year 2,951 policies lapsed, showing you the large proportion of lapses which this business has. That same year we paid 20 per cent back to the policy holders. In 1903 we paid 23 per cent back to the policy holders. In 1904 we paid 27 per cent back to the policy holders. In 1905 we paid within a fraction of 28 per cent. We try to be as liberal as possible. We formerly had a clause in our policy for sick business, stating that we would pay only half benefits for four diseases—heart disease, consumption, rheumatism, and paralysis. We now pay full benefits for those.

We have an inspection, but we never have a medical examination, because our risks are small, being only \$43 on each person, and if we attempted to have a medical examination on each person it would

take away \$100 to \$75 at the lowest to comply with that, because they charge 50 cents for each examination. So this examination is made by some one employed on a salary and he uses his judgment as to whether the risk is proper or not. In order not to give him too much latitude we ask a very few questions. We simply want his judgment as to the general personal appearance of the applicant, as to whether he should be admitted or not. I mention these few facts because you see how difficult it is to run this with the class of business we are dealing in and the uncertainty of collecting these premiums, even after the members have been placed on our books.

Mr. BYRDSALL. According to the figures there is quite an abnormal increase in the salaries of agents in 1904 and 1905—from \$8,000 to \$13,000.

Mr. HARTMAN. I am coming to that in a moment. Now, going along this line, there being no protection, as I said a few moments ago, to these companies in the District of Columbia, any agent or set of agents can go out and prevent us from accomplishing the act which we have set out to do. In 1905 some of our agents left us in a body; they organized another company and immediately proceeded to do what you have had an explanation of, to try to secure insurance from the people they had secured for the company and which the company had paid them for. They succeeded to a large extent. The company had to try to break that up, to try to retain as much of that insurance as possible, and to recover what was possible to recover, and that was expensive. Not that we denied the right that they had to go in for themselves, but they went right out on our own business, the business we had; they were familiar with that and, of course, they had advantages in getting that business for themselves. So, consequently, the company was put to great expense to try to save what it had already acquired. We did not alone save that business, but we got more of it; we made an increase of \$7,000 in our income over the preceding year.

Now, I want to impress on the committee here, if possible, the small death rate which we pay—and I drew an illustration, which, if the committee will allow me, I will read. The first year we only paid \$156.25 death benefit; but we paid \$1,080.25 accident and sick benefits. The second year we paid \$220 death benefits; we paid \$2,678.24 sick claims. The third year we paid death claims \$834.43, and we paid sick claims \$5,388.92. The fourth year we paid \$1,376.25 death claims and \$6,973.01 sick claims.

This money was distributed among a vast number of people, and I think I can say without fear of contradiction, that if it had not been for this form of insurance these sick benefits, which were paid, a great many of those people would have been a charge on the community or would have had to go to the associated charities for help. I speak advisedly, because I am an active worker in the field. Most of the time I am out among the people that we have insured.

Right here I wish to state the reasons why I have gone into these figures. I would like to give a complete outline of the business: The number of men we employed in 1902 was 8; in 1903 we employed 10; in 1904 we employed 16 men, and in 1905 we employed 22, showing the gradual increase that we have been compelled to make in our agency force.

I have here a complete statement of our officers' salaries and agents' salaries. In our company we have four officers actively in the field the same as myself, who devote their entire time to the transaction of this business and have no side issue whatever. Then we have a legal director, who also receives a salary. That practically covers the salaried men of the officers of this company.

In conclusion, my object in bringing this to you was through the request of Mr. Parker, and I desire to state that if any legislation is given these companies on the lines laid down in the bill 19154 that that would amply protect these companies, for at no time are we really called upon for any great amount in death benefits. Our liability is apparently always on sick benefits and not on the death-benefit feature, and I think \$10,000 is ample—and, as I have said, I have had twenty-five years' experience in this business—to cover any loss that may occur under this form of insurance. My object in giving you this definite statement as to what we do and how we do it is to bring about, if possible, the enactment of that measure. I thank you, gentlemen, for your attention.

Mr. DE ARMOND. I notice in your certificate here there is a provision that any statement made in this application—made by the person who gets it or the agent—which is incorrect, and so on, shall operate to forfeit the policy.

Mr. HARTMAN. Now, I want to explain that. Every company of course has its own method of doing business. Our company has never—I can honestly say this—has never fallen back on that provision, except to return back in full the premiums paid, in any case that has come into the company through misrepresentation. I can give you an illustration of that. A man or woman applies for membership. We had a very ugly case here about two years ago. A lady applied for membership. She had a bad ulcer just above the knee. Now, it is not within the province of these gentlemen who go around to examine the applicant to examine a woman to the extent of determining as to any ulcer she might have on her leg. She was admitted. When she applied for sick benefit the company immediately lifted her policy and returned to her the full amount of those premiums.

Mr. DE ARMOND. The part I am particularly calling attention to is this: In these contracts there is a clause to the effect that any misrepresentation made by the agent, who is your agent, shall forfeit the policy.

Mr. HARTMAN. You want an answer on that?

Mr. DE ARMOND. No; I merely call your attention to it; it seems to me that that is out of the line of insurance.

Mr. HARTMAN. The agent sometimes in his desire to get business, I have no doubt, distorts the statement of the person who wants insurance.

Mr. BIRDSALL. Does not the District of Columbia Code provide for making the application a part of the policy?

Mr. HARTMAN. I think not.

Mr. DRAKE. Not industrial assessment companies.

Mr. HARTMAN. We have done it voluntarily—

Mr. DE ARMOND. What I am talking about is the clause which makes the policy forfeited on account of any misstatement of the agent.

Mr. HARTMAN. We have never exercised that.

Mr. DE ARMOND. But it is in all these applications and in all these contracts, not only that if the person who takes out the insurance makes a misstatement it shall operate to forfeit the policy; but if the agent makes any misstatement it will operate the same way—make the policy void.

Mr. DAVIS. Let us grant that should go out; we do not ask to have that clause.

Mr. DE ARMOND. The thing we are granting is that it is in.

Mr. HARTMAN. We have never exercised it in any shape, except in such a case as I mentioned.

Mr. DE ARMOND. That is another case; of course that was properly voided.

Mr. HARTMAN. The agent in every case, I believe, endeavors to ascertain the truth, and the man who inspects the business endeavors to ascertain the truthfulness of the application. The application is turned in and we go out and see the person at his home and we ask him if that statement is correct—whether he is in good health—and he says yes; he is in good health. Now, then, when we find two or three months later that a deception has been practiced upon us, we return the premiums paid in and cancel the policy.

Mr. BROSNAN. That is always the practice.

Mr. HARTMAN. And Mr. Drake can confirm the statement that we have been exempted from taxes on that feature; that we have never paid taxes on premiums that we have returned.

Mr. DRAKE. Yes, sir; that is true; you have not paid taxes on returned premiums.

Mr. HARTMAN. I thank you very much, Mr. Chairman and gentlemen.

STATEMENT OF MR. DRAKE, SUPERINTENDENT OF INSURANCE.

I have been of the opinion ever since I read the original Ames bill, which excluded this class of companies from going on with their business, that they should be recognized, and I so suggested it to him and also the committee at Chicago, but I did not succeed in getting any of them to consider it. I have been approached by a very great number, not only of the members of these companies but others, to make suggestions in regard to the bill that was proposed and approved by the committee at Chicago, of which I was a member. I declined to do it, suggesting that if the bill were not in accordance with their ideas the proper place to present their ideas would be before this committee. And I repeat that I think they are entitled to consideration. As I said at the very beginning of this conference, I am in favor of protecting those companies that Congress is responsible for. There are 14 here operating under charters of the District of Columbia. But I do not favor the organization of any more.

Mr. STERLING (in the chair). Now, would you limit that strictly to industrial insurance?

Mr. DRAKE. To all kinds of assessment insurance—

Mr. STERLING. Fraternal insurance?

Mr. DRAKE. No; I was going to say other than fraternal, and I want to make a distinction. Mr. Cave fell into error in referring to the Masonic Mutual Relief Association. That association holds its

charter by a special act of Congress, and it is purely a fraternal company, with the right, authorized by recent amendment to its charter, to write old line life insurance.

In explanation of the position that these companies have taken in regard to the net premium, that was the most difficult matter to determine at the time the department was open. The words "net premium" in fire insurance mean reinsurance and returned premiums; also those that are prorated. The term "net premium," as determined at the hearing before the full Board of Commissioners in December, 1902, means, in life insurance, gross premiums less the dividends that they return to policy holders. The department immediately after the hearing ruled that all companies that paid no dividends on their premiums to policy holders should treat their gross premiums as net, and upon that basis these industrial assessment companies paid taxes for the first two years. They remonstrated against it and to such extent that a hearing was had before Commissioner Macfarland, who ordered a further opinion from the corporation counsel, and that opinion was that there should be no exemption.

I had acted before upon the basis of treating life insurance premiums as net in the Ohio department, where I came from, taking the initial cost in such cases of the premium from the gross premium, and the residue was taxed. They were satisfied with that the first two years, but subsequently they became dissatisfied and insisted upon a further hearing, which was given them before Mr. Macfarland, the president of the Board of Commissioners, who asked for a legal opinion, and the opinion given by the former corporation counsel was overruled and they were required to pay their taxes upon the basis of the gross premium, which, according to the interpretation, meant net in their line. All of them paid taxes on that basis until last year, and including this year, there are several that have not paid either taxes or license fees.

Mr. STERLING. Does the law as it now is permit the organization of fraternal insurance companies?

Mr. DRAKE. Yes; there is a special law, the best law we have, because it is clear and specific.

Mr. STERLING. Are some companies organized and doing business under it?

Mr. DRAKE. Yes, sir; several; they are provided for, distinctly. If our statutes were all as clear as subchapter 12 of chapter 18 of the Code of Law for the District of Columbia, I would have had no trouble to speak of in administering the law. That was originally enacted, I believe, in 1879—four or five years before the department was established, and when the code was established that was merged into it, with the proviso that it should stand as originally enacted, with a few amendments.

The bill that the department has recommended to your honorable committee for the purpose of regulating industrial assessment life insurance, especially in the District, and which is filed in connection with the records of this meeting, was prepared with great care by the department, with the assistance of the corporation counsel, and we hope you will find it consistent to recommend its passage just as it is.

As I said before, the incorporation law that was enacted for the

District May 5, 1870, made no provision for assessment life insurance of any kind; therefore until early in 1887 companies of this kind that were incorporated in the District received their charters direct from Congress under special acts.

On January 26, 1887, Congress passed a law regulating the business of legal reserve and assessment life insurance in the District. In the enactment of the District Code, however, which took effect January 1, 1902, the law of 1887 was repealed, and, in my opinion, the situation assumed the same attitude thereafter that it did before the law referred to was enacted; therefore companies of this kind, I maintained, could not incorporate in the District after December 31, 1901. I so ruled and maintained this position, refusing in one instance to license a company that had secured its charter after the insurance department was established, and it yielded to the ruling.

About two years ago, however, a legal opinion was urgently asked for on the subject by several prospective companies and their requests were complied with. A legal opinion was procured and approved by the Commissioners to the effect that such associations could organize in the District with or without capital stock. The doors were then thrown open and new companies of this kind again began to organize here. Last year this opinion was overruled in part by the Department of Justice, to which a domestic company (chartered outside of the District) appealed direct because the recorder refused to record its articles of incorporation, and that tribunal decided that an assessment association without capital stock could not incorporate here. I feel quite sure, as I have all along, if a test case were made of insurance assessment associations that have been organized in the District since January 1, 1902, on the capital stock basis they would share the same fate at the hands of the court. There is no more law for the one than there is for the other; besides the capital stock system, under which the business of insurance is conducted, is altogether different from that of the assessment system. The two systems are therefore incongruous and at variance with each other; they can not be made to blend or harmonize without special legislation, and one of the objects of the department in preparing the proposed bill is to legalize, as well as to regulate, assessment associations that have been organized in the District since January 1, 1902.

These associations carry no reserve, and, with but few exceptions, they have no assets to speak of, except their capital stock, which in one case is \$900, that being the minimum, and in another \$20,000, which is the maximum amount. There is nothing to prevent these associations from disbanding at any time, distributing their capital and assets among the stockholders, and leaving the policy holders without insurance, or security either, of any kind. The situation, therefore, is deplorable and something should be done during the present session of Congress to protect the poor and ignorant patrons of these institutions, the most of whom are negroes.

After the original draft of the bill was submitted to the Commissioners—I mean the one for this year—these fourteen associations were requested to file suggestions to be considered in connection with the proposed bill. This was done, and such of those suggestions as were deemed advisable to adopt were embodied in the bill now under your consideration.

Annually for the past three years we have presented a bill to Congress to regulate this kind of insurance, but we have not met with any success in the way of enactment.

The companies that have been organized since the insurance department was established have all been forewarned of the intention of the Commissioners and the department to have laws enacted at the earliest date possible to better protect this class of policy holders; therefore, they have no just grounds of complaint to make along this line.

The claim by some of the companies that the proposed bill would work a hardship on the policy holders of any company that could not comply with the requirement to deposit \$10,000 in securities is not well founded. Even if it should occur that some of these companies could not make the deposit and were compelled to suspend on that account, the only possible disadvantage to the members would lie in their being compelled to join another company and be out of benefits for a few weeks. This disadvantage, if it should occur, would be trifling as compared with the advantage they would derive from the proposed legislation, which would confer an everlasting benefit on the membership of all the companies and the community at large.

As stated by Mr. Curry, examiner of the department, under present conditions it is notorious that these companies can be incorporated and licensed with practically no assets and no security for policy holders, and those that were incorporated here last year have no financial backing save their capital of \$1,000 each, which they voluntarily paid in. On account of the extreme laxity of the law governing this kind of insurance the number of these companies incorporated in the District is disproportionately large, there being only 4 in the State of Maryland and 2 in the State of Pennsylvania, as shown by the official reports of these States for 1904—one of which has since failed—while there are 14 of them incorporated and licensed under our laws. The rush to incorporate these companies in the District of Columbia is due to the fact that solicitors of existing companies can organize with a trifling amount of cash and immediately begin insuring the lives and health of the people here. Besides the lack of financial security of the companies so organized, the incorporators depend largely on carrying with them to the newly organized companies the members of the old companies for which they have worked. This works a great disadvantage to the insured, who are thereby kept "out of benefits" for a certain period every time such a change of membership is effected. This manner of constantly inducing the members to leave one company to join another is a comparatively easy matter, because the great majority of them are people of little or no education and what knowledge they have of the company is usually derived from their contact with the solicitors and collectors who call upon them weekly and not with the officers of the companies.

The objectors to this bill point out only two States which they claim require less financial backing for these companies than is provided in the proposed legislation here. These States are Maryland and Pennsylvania. Maryland has only 4 such companies incorporated under her laws, and the report of the insurance commissioner of that State for 1904 shows that they had admitted assets ranging from \$54,479.17 to \$846,959.36.

In 1902 the Maryland legislature passed an act to the effect that companies of this class under consideration here, which had reported to the Maryland insurance department for the year 1897, should deposit \$500 per year, beginning with the year 1893, until they had deposited \$10,000. The act referred to required all subsequent companies to deposit \$50,000.

The Pennsylvania legislature passed an act in 1903 providing that assessment companies issuing policies for no greater amounts than \$250 may organize when they have applications from at least 500 persons, amounting to not less than \$50,000, upon which applications at least one-twelfth of the annual premiums have been paid, provided that no such company shall be authorized to do the business of insurance until it shall have deposited with the insurance commissioner the sum of \$5,000 in cash or approved securities. Here nothing is required but the capital stock, which the department holds must be paid up and kept intact, but the companies can make the amount anything they desire—it seems from the charter of the Congressional Life Insurance Company, which I refused a license—from \$1 up.

A number of States in which life insurance on the assessment plan is permitted require deposits very much greater than \$10,000, and Massachusetts, which is conceded by many to have the best insurance laws, has not allowed the incorporation of assessment companies since 1899. New York has recently repealed its assessment life insurance laws and the new law provides further that an assessment life association applying after May 31, 1905, for an initial permit to do business in that State shall not be granted.

During 1903—that being the last year we have complete returns of these associations, because several have since refused to submit statements of their transactions and financial conditions—the assessment companies incorporated under the District law collected \$168,065.42 and paid back to policy holders \$40,155.73, or less than 25 per cent of the amount collected. In view of the situation I think the proposed new requirements are not too severe, and I trust you will recommend the revised bill to Congress without further change.

This, gentlemen of the committee, is all I have to say in support of this bill.

STATEMENT OF HON. HENRY E. DAVIS.

Mr. DAVIS. Mr. Chairman, will the committee indulge me a word in respect to an aspect or two of this matter that has developed to-day?

In the first place, let us dismiss all talk about this conflict between the superintendent of insurance and these companies now pending in the courts. The action was taken by these companies on my advice; I have been their counsel for some years. In the opinion which I gave them, and to which I adhere, they were not liable to the demands made upon them by the department. The matter was submitted, very fully argued before Justice Stafford, than whom we have no broader mind or better lawyer on the bench. He held it under advisement for weeks, sent for counsel, and in his consultation room he informed us that he had read and reread the insurance laws of the District and had decided not to render an opinion, but

pass it on to the court of appeals. That amounts to nothing, and ought not to cut any figure in this discussion.

Furthermore, in reference to the question of who are the stockholders of these various companies, it seems to me a foregone conclusion, as I pointed out the other day, that they have to have stockholders to start, and who they are, with all respect to Judge De Armond, can cut no figure in the question we are considering. In the beginning the first insurer was an individual, and the men who came to bear his share of the burden were called underwriters, because they took a part of the responsibility off his shoulders. Insurance began with individuals undertaking to insure and the insurance company is nothing in the world but the mere development of one form of corporations in the general development of that class of industrial concerns.

So it makes no difference whether an insurance company is composed of 50 stockholders, of whom 49 have but one share and the fiftieth has the rest. The question we are here considering is the adoption of some legislation that is going to protect the men that the company is undertaking to insure, and this bill has been framed with that object in view, not for the purpose of enabling the companies to make money or to pay high salaries to their officials, but to protect the insured, and it has all been thrashed out, the matter has been before the department of insurance, the Commissioners of the District of Columbia, the Committee on the District of Columbia of the House of Representatives, and is now here, with the result that this bill 19154 represents the best judgment of all who have given attention to this matter for the past several years, and in the judgment of those who have given it this careful attention it is the most, if not the only, practical solution of the question of assessment companies, the only alternative being to prohibit them altogether.

Now, I do not suppose it is open to discussion that they are to continue, because, for the reasons stated here, this is an absolutely necessary form of insurance—unless it is the wisdom of Congress that the classes who are insured in these companies and who can not be insured in any others are not to be insured at all; if that is the wisdom of Congress then let there be no act except an act forbidding insurance companies of this sort; but on the assumption that they are to be continued this bill has been prepared. It is certainly amply protective.

Reference has been made again to-day to the \$10,000 deposit feature, which we think ought to be in this bill even if there is no other provision in it. That is the requirement, that there shall be this deposit of \$10,000 as a guaranty for the performance of these contracts with the insured, and if you do not have it what Mr. Hartman has narrated will be occurring every day; these agents will be setting up little companies and dividing this insurance among a great many irresponsible people, whereas, if this law is passed it will be held in the hands of a few responsible corporations with ample protection to the insured.

With reference to the cost of this class of insurance and the relative percentage of payments back to the policy holders, what Judge Sterling read this morning is in line with everyone's knowledge who has acquaintance with this subject, regard being had to the cost

of this kind of insurance. These companies pay back a larger percentage to the insured than the old-line companies do, and in the old-line companies every lapse is a profit to the companies. In these companies, as Mr. Hartman has shown you, if the lapse happens before the agent has selected enough to pay him for his commission in getting the risk the lapse is a loss to the company, and that is a feature of this kind of insurance in addition to the other features that have been pointed out—of the necessity of 52 weekly visitations every year for the purpose of collecting the premiums, which in the case of the old-line companies are sent to the office through the medium of a check and a postage stamp.

So, then, in analyzing this thing it will be found that these companies, in the first place, insure a class of people that can not be reached by any other class of insurance; and, in the second place, regard being had to the conditions under which they work, they return to the insured a larger percentage of what they take in than do the old-line companies. We are here now asking to be made responsible, to be put upon a footing so that the community will accept us as accredited insurance agencies and concerns and upon a footing such that we will stand before the community with the pledge of security to the insured which can not be taken away and which will be a guaranty of the performance of every undertaking that we enter into.

Finally, as to this form of policy, as I said the other day I say now, the elasticity of this bill (H. R. 19154) is a great argument in its favor, because the policies can be adapted to the experience, as I said, and it is perfectly safe to trust the form of that policy with the department of insurance under the conditions of this act; that is, let it be prescribed in the manner fixed by the superintendent, subject to the review of the Commissioners of the District of Columbia.

And in reference to these statements that are in some of these policies, let it be granted that some are not commendable; let them go out. The superintendent will see to that. But it is not such a monstrous proposition that the insured shall warrant what the solicitor says, because in a great many policies of insurance there was for years this clause:

For purposes of this application the solicitor presenting the same shall be deemed the agent and representative of the applicant.

MR. DE ARMOND. Do you think that is a proper thing to have in the policy?

MR. DAVIS. I do not; I am only saying that it is not an unusual thing. We have been getting away from it, but the books are filled with cases to-day in which the court has been put to its trumps, if I may use that expression in this presence, to determine whether under a given set of circumstances a man presenting the policy was the company's agent or the agent of the applicant at the moment.

MR. DE ARMOND. Do you not think as a matter of fact every one of those was a fraud on the insured?

MR. DAVIS. Let us grant it; who did it?

MR. DE ARMOND. The insurance company.

MR. DAVIS. On the contrary, pardon me, the solicitors are a class in themselves; they are in the business by themselves.

Mr. DE ARMOND. They are employed by the insurance companies.

Mr. DAVIS. If they are employed as agents and sent out nakedly as agents, yes; but when an insurance solicitor is required to have a license and puts himself in a class like a lawyer or real estate broker and physician, and he goes to an insurance company with an application, the law says he is the representative of the applicant. If he goes out with credentials of the insurance company and says, "I have come to ask you to insure," nakedly, he is the agent of the insurance company; but there is a large middle ground over which the courts have fought for years, and to-day in this District there is a moot question as to whether when a solicitor—I will give you a concrete case without naming the company; this actually happened.

A solicitor who bore a license here in this District as a solicitor for life insurance went to a merchant here and said "Let me place you in some insurance company," and he mentioned several. The man said "I prefer such and such a one." The solicitor went and got a blank form of application and took it to the merchant. The merchant signed it, signed the application, and then the agent presented the application to the company as coming from the insured through him, and the company declined to recognize the man as its agent at all, and insisted that the solicitor should be recognized as the agent of the applicant; but, unfortunately, that question never reached a judicial determination. That question is liable to arise under existing conditions here and elsewhere almost any time. I am not arguing to sustain it, I am only saying that there is not anything very shocking in the discovery that the agent is treated as the agent of the applicant for insurance, because it used to be very common, and the applicant had to underwrite his name and make the statement "that for the purposes of this application the solicitor presenting the same shall be the agent and representative of the applicant." As I say, the books are full of adjudged cases on the subject.

Only one word in conclusion. Mr. Curry has presented here to-day an amended form of this bill 19154. In my opinion the amendments are proper and ought to be adopted, with a single exception, and that is the initial one, which requires these companies to procure and keep in force a license. Now, what the meaning of that is, unless it be to renew it every year, I don't know; but it can not have any other meaning, and if that be the meaning it ought to go out.

(Mr. Davis read aloud the amendment referred to.)

Now, the bill throughout provides for revoking the license from time to time and under certain conditions and for certain reasons, and it ought not to be left to the power of the superintendent of insurance arbitrarily to say each year whether he will renew the license. Having the power to take it away for specific causes is an ample provision and protection. He ought not to have the power to demand that it be renewed every year and be left with the arbitrary power or even discretion to say that it shall not be renewed from year to year. Given a corporation which has complied with all the laws, has passed the visé of the superintendent and the clerk of the supreme court of the District of Columbia and the recorder of deeds, and has a license to do business, it ought to be permitted to do business until it forfeits its right for some reason assigned, and ought not to be required every year to get a fresh license.

Mr. DE ARMOND. I understand you to be of the opinion that with

reference to such companies as these you represent, or, rather, with reference to legislation concerning them, that inquiries as to how they are organized and how their expenses go—that is, whether one man in effect absorbs a large proportion of what is taken in in these assessments or premiums—are totally immaterial?

Mr. DAVIS. On the contrary, I say this, that for the purposes of this bill—that is to say, a bill which has for its object the protection of the insured—it is quite immaterial how many stockholders there are and the proportion in which they hold their stock; it is not material to inquire—which is quite another thing—whether they are demanding exorbitant premiums and whether they are exacting from the insured more than they ought to and are spending more money for their expenses than they ought to. But this bill requires every one of them to lay bare before the superintendent of insurance every year their entire profits, including salaries, operations, and dividends and everything of the kind.

Mr. DE ARMOND. Can you think that in an effort to have this bill enacted into law there is any special reason why some of these things should not be laid bare before those who are expected to pass on it?

Mr. DAVIS. If you will pardon me, it would not assist my deliberation, and I do not see how it could assist anyone, unless it would develop that there were extravagances in management, and it has already been stated here over and over again that no officer of any one of these companies has ever received a salary to equal or exceed \$2,000; and the only other expense that has been shown to have been incurred is the expense incurred by the agents themselves. And surely, as I suggested the other day, if it is to limit the pro rata of expense for the conduct of the companies to the amount taken in, it is very easy to write that into the law.

Mr. DE ARMOND. I understand, but you are advocating now the passage of a bill which would require certain disclosures, and you are appearing, in part at least, for people who decline to make any of those disclosures before the committee.

Mr. DAVIS. Unfortunately there was a personal situation involved that you were not aware of. Had I been asked those questions in the position of anyone else here I would have frankly answered then, and I have no doubt if you will press your questions—

Mr. DE ARMOND. I am not pressing it.

Mr. DAVIS (continuing). Every one of these companies will give you their salary lists and expense lists.

Mr. DE ARMOND. No; I do not care to do that, but it occurred to me that it might be worth while to know some of these things in passing upon this question.

Mr. DAVIS. It is possible.

Mr. DE ARMOND. Quite possible.

Mr. DAVIS. And for myself I say were I an officer of the company in position to give you the information you should have it.

Mr. DE ARMOND. This Ames bill was drawn, I believe, originally on the theory that this kind of company ought to go out of business.

Mr. DAVIS. No; that would seem so on a casual reading of the bill, but that is not so; the object of the Ames bill was to put out of existence assessment companies that are dependent upon survivors—ante-mortem insurance. We had an example of it. Nobody wants to restore that kind of insurance here. The Ames bill only hits that

kind of insurance, is limited to those that pay benefits upon survivors, and that did not touch this class of companies that we have been talking about here to-day, and the amendment I suggested the other day to the first section of the Ames bill, by excepting this class of companies, will remove any doubt at all as to the application of any portion of the Ames bill.

Mr. DE ARMOND. I think I got from your remarks before that you thought that unless some such amendments were put in it would wind up your companies here?

Mr. DAVIS. No, sir.

Mr. DE ARMOND. I may be wrong.

Mr. DAVIS. What I meant to say and thought I said was this: Reading the Ames bill, it will be seen that there is no provision for this class of companies; but inasmuch as the first section of the bill declares that the word "insurance" or "insurance company," whenever used in the bill, shall be deemed to apply to all sorts of insurance companies, that raised a doubt as to whether these companies might not be brought under the provisions of the Ames bill; and if so, they would be killed, because the conditions required of them by the bill are too onerous for them to bear. That is what I wanted to be understood as saying.

I am very grateful to the committee for its patience.

Mr. CURRY. I would like one minute to make an explanation. I want to state in connection with Mr. Davis's criticism of the clause of the bill requiring these companies to be licensed, to keep the license in force, that that provision was put in because some of the companies that are licensed considered that their license was a license forever, while other provisions of the existing law provide that all licenses shall expire on the 30th of April of each year.

Mr. DAVIS. That is a very different proposition; the license to do business is for the purpose of revenue and has to be renewed every year; the license to do business as an insurance company primarily is intended to keep outside companies from transacting business here until after they have passed the scrutiny of the superintendent of insurance. We can not start until after we have become incorporated and passed the scrutiny of the superintendent of insurance. What is the use of having that done every year—putting it in the power of the superintendent to take away our license?

Mr. CAVE. I know of no State that requires the domestic insurance companies to take from that department or receive from that department an annual license, and neither does the superintendent of insurance of this District, but he is endeavoring to compel these companies to receive from him an annual license when their charter and license given them by the Commissioners of the District of Columbia prior to the enactment of this code gives them a license perpetually until they violate some provision of law, and then they had a right to revoke their license. Now, this sought to compel this class of companies to take out an annual license, when the provisions in that bill are ample, and do authorize him to revoke licenses in case they fail to comply with any provisions of that law.

Mr. CURRY. The difficulty experienced in acceding to Mr. Cave's suggestion would be that the law already provides in other sections that all licenses shall expire on the 30th of April.

Mr. DAVIS. Those are revenue licenses.

STATEMENT OF FRANK ABIAL FLOWER, PRESIDENT NATIONAL MUTUAL BENEFIT CORPORATIONS, WASHINGTON, D. C., AND VIRGINIA.

Mr. Chairman and gentlemen, this Ames bill purports to apply to the District of Columbia, but as it did not originate in or with the District of Columbia, was not prepared in the District of Columbia or by District of Columbia people, was not asked for by the District of Columbia, and, of the five days that have been devoted to the hearing upon it less than one day has been given to District of Columbia interests and persons, and as several important points and interests have not even been referred to, I shall not feel embarrassed if I happen to go beyond the fifteen-minute rule that has been suggested for the District of Columbia speakers.

This bill (H. R. 17760), however, is not what it seems to be. It is a masked battery. Its title originally was "To provide Federal regulation of insurance." Later, while the text of the measure was not materially changed except by expansion, not at all in principle, the title was amended so as to read "To regulate insurance within the District of Columbia."

That the narrowing change in title did not alter the original broad purpose of its authors and supporters seems to be disclosed in many ways by this hearing, and is apparent in the provisions of the bill itself.

In his address to the Chicago insurance conference, which appointed a special committee to amend the original Ames bill, Mr. Ames said:

We come here seeking advisement in our efforts to perfect this code, which we would like to have incorporated into District of Columbia or national law for the double purpose of indirect control of insurance and forming a standard for legislation by the various States.

Before going to the gravamen of the matter, it may be said that if the purpose of the authors was to secure merely a model for State legislation on insurance, nothing further was required than perfecting and printing a bill and pledging the several State insurance commissioners to take it home and induce their States to adopt it.

Such a measure, emanating from acknowledged authority on insurance, would have as much affirmative power as a formal act of Congress. Indeed, if the States really want this bill, they will adopt it, no matter what action Congress may take. Hence, any action here, one way or the other, is unnecessary.

But the conclusion seems to me to be unavoidable that a mere model is not what is being sought—nor what is wanted, primarily—except so far as it may prove to be the entering wedge for ultimate central control of all insurance in the United States, and that, too, according to a provincial plan, the Massachusetts code.

On its face it seems to be a scheme to compel all of the States of the Union to adopt the Massachusetts code of insurance, so Massachusetts will not have to go to the expense of changing her laws, forms, blanks, etc., and, as Mr. Ames says, to do it "indirectly." Even the term "commonwealth" is retained in the Ames bill. (See page 96.)

The courts hold, and it is a maxim of law, that "what may not be done directly shall not be done indirectly."

Mr. Ames several times hinted his purpose, and more than once

openly stated it in his remarks at the Chicago Insurance Conference. On page 36 of the proceedings of that conference, sent to Congress by the President as an official document (Senate Doc. 333), he said that "the general opinion among the lawyers of the House and Senate is that the United States Supreme Court has determined that insurance is not commerce, and therefore Congress is not authorized, under the interstate clause of the Constitution to control insurance."

Then Mr. Ames proceeds to tell us:

So we looked around for some means of control without violating, not the inhibition of the Constitution, but the lack of authority of the Constitution for Federal control.

In other words, he "looked around" for some means of nullifying the decisions of the United States Supreme Court—i. e., controlling as commerce that which the court has declared is not commerce—and, as he says on page 42 of the proceedings of the Chicago Insurance Conference, "looked" for an "indirect" manner of doing it; he "looked around" for a way that is forbidden by the maxims of law and the judgments of courts to make several affirmative decisions of our highest tribunal (see House Report 2491) ineffective and inoperative.

To this curious record the President, not having been able to investigate the matter, gave his official indorsement, sending the proceedings of the Chicago Insurance Conference to Congress to be printed as a public document, and asking that the Ames bill, as amended by that conference, still further amended, perhaps, be enacted into law.

That the President understood this Ames bill to be what it often has been declared to be, an "indirect" method of securing essential Federal control of all insurance in the United States, notwithstanding the decisions of the Supreme Court, is, I think, very plainly indicated by his message on the subject. He says that the Chicago Insurance Conference was the result of disclosures by the Armstrong committee and closes thus:

We are not to be pardoned if we fail to take every step in our power to prevent the possibility of the repetition of such scandals as those that have occurred in connection with the insurance business as disclosed by the Armstrong committee.

As the Armstrong committee did not sit in the District of Columbia—did not investigate a District of Columbia company or a District of Columbia transaction—and as Superintendent Drake has declared that there is no life insurance company in the District of Columbia that would be affected by the fundamental provisions of this bill, the President must have assumed with Mr. Ames himself that this measure was designed and is intended, in some "indirect" way to secure a Federal grasp upon the internal management of insurance companies that have been incorporated in the several States, have their home offices in those States, and are operating under and according to the laws of those States and of the vested charters granted therein.

That in this view the President simply shared the general opinion of those who are "on the inside," seems to be well demonstrated by the fact that all of those who have spoken here in favor of the bill (except Superintendent Drake), as well as many who have opposed all or certain of its provisions, have come from beyond the District of Columbia; that of the five days given to this hearing four days

and two hours were devoted to speakers from outside of the District of Columbia; that there was no suggestion of curtailing debate until District of Columbia interests were reached; that all of the supporters of the measure (save Superintendent Drake) absented themselves soon after the District of Columbia interests appeared here to inquire whether certain destructive clauses of the measure were intended or would be held to apply to them and, if so, to protest against their adoption.

Now, to the old saw that "all is fair in love and war," we may have to add the word "reform."

The reformer in his zeal may feel that he is justified in violating the maxims of law and evading the practical effects of the decisions of courts by doing "indirectly" what he is forbidden to do directly, but Congress, the great constructive arm of the three coordinate branches of government, can have no lot or part in such methods.

However, suppose there were no fundamental objections to legislation of this character; what is the proposition for making it effective?

Superintendent Drake, who says he is not a lawyer, declares in his letter to the President (Senate Doc. 333) that the bill, if enacted into law, will exclude from the District of Columbia all insurance companies which do not conduct their business in New York, New Jersey, California, or any other State not according to their vested charters and the laws of the States under which they are organized, but according to the terms of this Ames bill, though such terms should be in direct opposition to the provisions of law in those States.

Mr. Ames says the same thing. On page 41 of the Proceedings of the Chicago Insurance Conference he declares that companies not doing business in the several States in conformity to the Ames code "can not do business in the District of Columbia."

Gentlemen, is not this an extraordinary proposition? Will you undertake to punish a California company for obeying the laws of California in the State of California?

Suppose—and we have several examples of retaliatory legislation on insurance—that each State in turn should enact a law declaring that no company not doing business in sister States in accordance with the code of the State passing such act should be permitted to do business in said State?

Where would be the District of Columbia companies? Where the State companies? Each would be confined strictly to its own State limits, competition would be destroyed, and some States would be left without adequate insurance protection.

Can a committee of lawyers take under serious consideration a measure that carries possibilities of this character?

The probabilities, we admit, may be more limited. Senator M. G. Bulkeley, president of the Aetna Life Insurance Company, together with other insurance officers, said here that if Congress should enact a law requiring them to violate the laws of their own States, or should pass such laws as could not be complied with without injury to their business elsewhere, they would keep out of the District of Columbia, and, Mr. Bulkeley added, they would lose little. This may not be the language, but it is the substance of what was said.

If the bill should do nothing more than keep State insurance companies out of the District of Columbia, whom would it benefit outside of the incumbents of a number of pretty good paying offices?

On page 36 of the Ames bill we find this language: "Every mutual life insurance company organized or authorized to do business in the District of Columbia shall classify its trustees," etc.

Language of this sort not only goes over into the physical domains of the several States, but may reach the charters of the companies themselves.

This language says that companies which are required by their charters and State laws to classify their trustees one way must violate their charters and those laws and classify them another way or not do business in the District of Columbia.

Other features of the bill, for the ensuing 46 pages, are of a similar extraordinary nature. In direct violation of every known principle of jurisprudence, they aim to control the home operations of State corporations.

To me the proposition is of such a character that it needs only to be stated—not argued.

Some supporters of the measure, realizing, apparently, the legal weakness of the features just mentioned, but wanting the bill to pass, argued that a great Federal bureau of insurance at Washington would enable the several State insurance commissioners to come here for information about companies applying to do business in their respective States.

Those officials, in my opinion, would do nothing of the kind, because either they or their State treasuries want the examination fees for themselves; and some States, without new laws, could not do so.

But suppose the State insurance commissioners wanted to sit in their offices like so many wooden tobacco signs, mere figureheads, and suppose the State of Missouri should ask the Federal commissioner of insurance to investigate an insurance company incorporated and having its home office in Alabama, and doing no business in the District of Columbia, could Congress endow that Federal commissioner with power that would enable him to invade Alabama, at Government expense, and investigate one of its home institutions?

But suppose the legal obstacles to this sort of a proposition were not Himalayan, would it be right for the General Government to pay the cost of investigating an Alabama concern because it was seeking to do business in Missouri?

And while dealing with the probable effectiveness of the Ames bill, if enacted into law in its present shape, I wish to suggest that if the expressed belief of some of its supporters that in case of enactment it would be adopted by the various States should come true, what would be left to be done by the large and expensive office force for which the bill provides?

The various States would be administering the law, which would be the same everywhere in their respective jurisdictions, and this \$50,000 office would have nothing to deal with except the flyspeck District of Columbia, which contains less than one twenty-fourth of the population of the country.

Insurance Commissioner O'Brien, of Minnesota, declared that the Ames bill ought to pass because so many insurance agencies are being closed and so many solicitors are seeking other employments.

Is it the province of Congress to rescue private business from depression?

Now, as to some specific points that have attracted considerable attention during this hearing. First, as to publishing the names of policy holders. It is a serious proposition, fraught with embarrassments and expense and without a redeeming feature that I can see. Let me just scratch the surface of actual experience: A man had a second wife who mistreated the daughter of her predecessor. He came to the office and wanted to know if he could carry insurance for the benefit of that daughter and be sure that no one but himself and the officers of the company should know of it. We told him that he could, and he took it out.

Two of three sons were profligate. The parent came to the office and asked if he could carry a policy in favor of the son who was not profligate and the transaction be secret. We told him that he could, and he took it out.

I dare say that more than 10 per cent of all of the unmarried men carrying insurance in our company have their policies made payable to sweethearts—the women they expect to marry—and this, too, without the knowledge of the women. In cases where marriage does not follow the insurance is transferred.

Even young women come in confidence and take out insurance in favor of the men whom they hope to marry.

This is the experience of every life insurance company, and I have not indicated a twentieth of the secrets of this character that are carried on the books of the companies as faithfully as a life would be guarded.

Society has little idea of the romances and tragedies that are hidden in the vast insurance archives of the country—and did you ever hear of such secrets being betrayed? Should they be forced out by law?

Gentlemen, do you know of any good reason for invading these sad, tender, and sacred records? If you should undertake to do so, I venture to say that there are insurance officers who would never submit without a judgment of a court of final resort.

Next, limiting expenses. Limiting expenses is no doubt limiting the volume of business, and there are certain kinds of insurance which require a constant accretion of new business, and a certain volume of it, too, in order to protect the old business.

Suppose this principle were to be applied to railway, sawmill, mining, printing, law firm, creamery, and other corporations.

Is it not an extraordinary proposition in law?

Why, Congress does not even limit its own expenses, nor the amount of its annual business.

As to a standard policy, so-called, I think I can see how it might be made to violate the principles laid down in *The United States v. The Joint Traffic Association*, 171 U. S., 505.

In that case the Supreme Court held that any agreement or contract which in effect prevented competition between the parties was a restraint of trade and in violation of law, "even though the rates charged under such agreement be reasonable."

In industrial insurance especially a uniform policy would prevent competition, because some companies write "immediate full benefit" contracts, while others give only one-half or one-fourth. Some grant "grace periods," and some do not, and some pay for sickness from

diseases which others exclude from their policies. One company, at least, that I know of, pays insurance in land.

The terms constitute almost as essential portions of the value of industrial insurance contracts as the rates of premium.

Therefore, for Congress to enact a law which would destroy or partially prevent competition in the insurance business, while the courts and administrative departments are struggling to punish the beef trust, the drug trust, and similar combines for doing that very thing, would be an exceedingly interesting performance.

No insurance commissioner should, in my opinion, be given power to change the form of policies or contracts without providing some effective appeal from his action and some method of compensating the companies for any loss or damage that might result from exercising such a power.

Under such an autocratic grant an insurance commissioner might, if so disposed, kill off or drive from the territory a new company that was trying to gain business and favor by offering more liberal terms than its older or richer rivals—a power he ought not to possess without restraint or review.

As I read it, the Ames bill prohibits paying insurance in land, and, perhaps, prohibits what is called "baby" insurance, as well as several other forms of organized indemnity.

By "baby" insurance is meant paying a certain sum at the birth of a child. This is important to the poor in localities which prohibit any but licensed midwives and physicians from attending accouchements.

Paying insurance in land, or houses and land, is one of the most valuable as it is one of the most interesting forms of indemnity known. The details of this kind of insurance vary, but as carried on in the District of Columbia, Virginia, and elsewhere in the South, the usual method is for the assured to take out a policy containing a clause which in effect is a land lease. The contract provides a weekly benefit in case of sickness or accident, thus enabling the insured to keep up his land-lease payments, and promises a deed of the land to his heirs or assigns in case of his death.

In the meantime the companies permit the assured to build and live on the land, thus saving rent, and the stronger companies even go so far as to build a house for him without any advance cash payment except the regular weekly installments—insurance, land, house, and all being carried by the insured by small weekly payments, which the company agents collect from him at his house, generally after his day's work is done and after all other business offices are closed.

Several times during this hearing I have noted sneers at the small capital and humble operations of the companies which do this kind of business. These "small" corporations furnish protection and opportunity for home buying to the weak and poor which can be got nowhere else, and—*I beg pardon for sermonizing and paraphrasing—*

Let no reformer mock the useful toll,
The homely joys, the destiny obscure,
Nor schemers hear, with a disdainful smile,
The short and simple annals of the poor.

And now that it is in mind, I wish to say a word or two in explanation of industrial insurance, which I see plainly, by the character of

the questions asked and the remarks on the side, is not understood here.

Our country contains over 10,000,000 negroes, and more than 20,000,000 unendowed whites, who, so far as capacity to earn and save is concerned, are in essentially the same class as the negroes. Generally they have large families and live mostly by rude labor. The returns of rude labor are small. Therefore, to this 30,000,000, white and black, some form of indemnity that will take the place of the employer when they are sick and therefore not only without wages but under an extra expense, is far more necessary than to any other class of people. In fact, to many it is that or public charity.

It is not so necessary that the total cost of the insurance be low as that the payments be so subdivided that they can be met weekly out of a moderate or meager wage.

The people thus insured are at work, generally away from home during the day, and unable to go in ordinary business hours to pay their premiums. If they were required to do so, the street-car fare and other costs might be more than the premiums, thus making insurance impossible.

So to each person thus insured is given a stiff card, properly printed and ruled, which contains the essence of the contract, and which he keeps at home. Collectors go to his house every week—or every day till they find him—and, as they collect, write on this card the amount paid, the date of payment, and the time to which the payment carries the insurance. A like record is made on a blank which the collectors retain and which in turn is copied into the office records, so that errors, thievery by the collector, and misrepresentation by the insured are practically impossible.

The insured is also provided with a printed "sick notice." When he falls ill enough to be entitled to benefits he sends this sick notice, together with his receipt card, to the office, and, if not in arrears, begins then to draw the weekly benefit specified in his policy.

This benefit is paid to him every seven days at his house, not at the company's office, and continues for the time specified in the policy, if the disability shall last that long.

Right here I desire to refer to a denunciation which I heard a member of the committee make to himself because industrial policies or applications constitute the person procuring the insurance the agent of the applicant.

This seems to be necessary. The solicitor is licensed and therefore responsible. If he were permitted to be the agent of the company and to hold the company to anything he might write in the application, the strongest concern could be put out of business in a year, for dishonest agents, in collusion with dishonest applicants, could bring in applications of uninsurable persons so worded and falsified that they would be accepted, whereas if the truth were known, or agents could not bind the company by a falsehood, they would be rejected.

This business is full of special features and forms of expense. Each policy entails more than fifty times as much labor as an old-line policy, with its annual and semiannual premiums paid by check; but when we compare the labor and cost of securing and carrying industrial insurance, with its more than fifty collections per year and its complicated systems of accounts, the premium rates are lower than on any of the old-line policies.

In any event, industrial insurance affords protection from the hospital, public charity, the almshouse, and the potter's field to those who can neither get nor carry any other form of indemnity.

Not only so, but it is the only widespread influence that is teaching a weak, untrained, and naturally thriftless race but recently emerged from bondage the necessity of forehandedness, of laying by for a rainy day, of preparing to meet regularly recurring obligations.

It is not only the only instrumentality in Virginia, Maryland, the District of Columbia, and elsewhere through the South that enables the negro to take care of himself, but it is the only one that saves thousands upon thousands of them from public charity and the potter's field, and therefore is as direct a benefit to the tax payer as to the insured. It is of special interest to Congress, too, which is called upon every year to make appropriations for institutions of charity in the District of Columbia.

An officer of the District who was for thirteen years connected with the public charities informed me that without industrial insurance Congress would have had difficulty in finding land enough for the potter's fields that would have been required for our 100,000 negroes and our 50,000 unendowed whites.

Another officer declared that the present cost of coffins for public burials is not one-eighth as great as it was in 1880, when the population, without industrial insurance, was less than half of what it is to-day.

Therefore, instead of being a business to be sneered at and subjected to unusual burdens and restrictions, it is one of all others that should be specially insured against such restrictions and burdens and, if possible, promoted and expanded.

The use of the word "insured" at this moment opens the way for thoughts of the most fundamental character.

There is essentially nothing desirable above the dead level of jungle barbarism that does not contain the element of insurance. We plant in the spring to insure against hunger during the coming winter. We build houses in order to insure against loss of health and life by inclement weather. We accumulate property as an insurance against the wastes and losses of business, destruction by nature, infirmities of age, and so on to the last item in the entire fabric of social and industrial activity.

In fact, gentlemen, Congress itself is the foremost of all insurance companies. The people elect and pay premiums to its Members for the purpose of insuring domestic tranquillity, protection against foreign competition and foreign invasion, an efficient postal service, open courts of justice, and the thousand and one things which constitute civilization and promote the general welfare. Government is insurance, nothing else.

As ordinary insurance companies appoint agencies here and there to gather and protect business and accommodate patrons, so Congress appoints agents in the form of committees to insure the central body and the people against imposition and injury by designing persons and selfish interests, the motives, objects, and effects of whose bills and schemes can not always be known without careful medical examinations such as the one now being conducted by this committee—this insurance agency.

Going a step further with the analogy, the vast business of insurance should not be indiscriminately punished, restricted, or assaulted because of irregularities in a few places, any more than the great insurance corporation of Congress should be kicked bodily out of this Capitol because a few of its Members are being convicted of rascality and sentenced to jail.

Acts of Congress are policies of insurance to the people. Such policies should be sound and liberal. They should remove, not create, unnecessary burdens; open, not restrict, competition; curtail, rather than enlarge, taxation; open the way for new companies, not create conditions antecedent that will give a perpetual monopoly to the present corporations, which, Senator Bulkeley told you—and Judge Sterling declared that he was appalled by the prophecy—will in twenty or twenty-five years absolutely control the financial affairs of this nation.

Can the Congress do that? Yes; abundantly, in my opinion, within the range of its power, but not by passing this Ames bill nor any other of the measures relating to insurance that are before you and which carry possibilities that none but persons skilled in the technicalities of insurance are able to detect, but by creating an entirely new corporation code for the District of Columbia somewhat along the lines of the Palmer bill (H. R. 263), but not by any means confined to permitting "commerce" between the States.

In searching for material for such a code keep in mind the fact that you wish to see how much can be left out, not how much can be squeezed in.

What Congress wants is not a law that controls and hampers the details of internal management of corporations, but one that retains full jurisdiction to keep tab on their main operations so far as they relate to or affect the public welfare.

First, I would make a thorough examination of the various corporation codes of the country, and of the decisions of courts in relation to their fundamental features, and likewise a full investigation of the insurance laws and practices of all countries. Having done that—

1. Frame a code along simple, generic lines.
2. Leave managerial details to by-laws.
3. Make all fees moderate and graded in proportion to the size of the companies paying them.
4. Permit executive or "main" offices to be located wherever convenient.
5. Permit meetings of directors and stockholders to be held wherever convenient.
6. Provide for a certificate of authority to do business for filing in the several States and in foreign countries.
7. Require copies of by-laws to be kept on file and reports to be made annually to a designated department at Washington, accompanied by a graduated franchise or license tax, levied in moderation, for the purpose of retaining active jurisdiction of the corporations chartered under the code.

The privilege of taking out a charter in the District of Columbia, but maintaining the main or executive office elsewhere, is important. The present code of the District is about as absurd as could be conceived. It requires the charter to declare just at what street number

the main office is to be maintained, so that if the building at that particular spot shall be destroyed by fire or shaken down by an earthquake and not rebuilt, or if expanding business shall make a removal to larger quarters necessary, or if the corporation shall desire to erect or purchase a building for itself elsewhere, no change can be made without a direct violation of a main provision of the charter.

The corporation codes of the several States are similar in character, nearly all of them requiring the charter to state at what point in the State the main office is to be located. They also require a majority of the corporators, and frequently a majority of the directors or trustees, to be citizens of the State, and all meetings to be held within the State.

As many concerns take out charters for operations not carried on within the State, these provisions entail unnecessary burdens. They are successfully evaded through the instrumentality of companies formed for the purpose of furnishing the required number of citizen trustees or directors or corporators and of going through the motions of keeping open a local office.

Thus, while the letter of the law is technically obeyed, the spirit of it is openly and flagrantly broken and the entire charter code brought into contempt.

A corporation code should accommodate itself to the requirements of modern business and be itself honest if it wishes the concerns organized under it to be honest.

Under such a Federal code, in my opinion, practically all companies or persons doing or desiring to embark in interstate business will gradually gather, and Congress, without costly and exasperating beef-trust suits and other investigations, will be able to keep tab on their operations, so far as it may be necessary to do so—in any event never lose jurisdiction of them.

To the objection that some time may be required to formulate such a code I answer, there is no reason for not taking all of the time that may be necessary.

So far as making a "model" insurance code for the several States is concerned, Congress is estopped from that, in my opinion, by the fact that the various State insurance officers will hold a meeting in September for doing that very thing.

There is nothing in the local insurance situation requiring precipitate attention. All of the local companies are paying their claims promptly and enlarging their business; the superintendent of insurance, under section 646 of the District of Columbia Code, has almost unlimited authority to look into and correct abuses, and his office is open to any complaints, without cost or fee, which the policy holders may desire to file. His office is and, I have been informed, has been for some time, free from such complaints.

So, as I said, there is no need for precipitancy. The only element that I can see that might induce haste is the one requiring a way for forming new insurance companies. The Armstrong law, we are told by the ablest insurance men who have appeared here, imposes conditions which render the organization of new insurance companies essentially impossible. This Ames bill does the same thing, and so does every other insurance bill that is on file before you that I know of.

Those gentlemen who told you here that you should pass some law

rendering the organization of new insurance companies difficult or practically impossible by requiring large deposits of bonds, etc., in order to prevent a band of their own employees from going out and forming a new company whenever they might see fit, would not have been here if such a law had been in force when they themselves left their employers and embarked in the insurance business.

Congress can not insure existing insurance companies, great or small, as perpetual monopolies so long as the growth of the country in population, strength, and necessities can not be restrained.

To do so would be flying in the face of the principles underlying all court decisions, playing into the hands of the great insurance companies, which Senator Bulkeley declares will rule the finances of the nation in twenty years, and flying in the face of the recommendations of President Scovel, whose constituency is greater and more important than that of any other person who has appeared before you, and who declared that the crying need of the time is for numerous small new companies to take up the various branches of insurance along modern economical lines.

This need can not be met by making original capital requirements very large nor by providing for a heavy preliminary deposit of bonds when there is no business to "protect." If, let us say, \$100,000 in capital and the same amount of bonds is not too much to "protect" the policies of new companies—when, really, they have no liabilities—then it is far too small to afford "protection" to the policy holders of the old and big companies. If this amount is, in fact, sufficient to protect the policy holders of the old and big companies, then it is merely the device of Herod to kill off the young companies and prevent the birth of new ones.

In fact, to be frank, I may say that this is the object of the bill, as clearly understood by all practical insurance men.

Let companies begin business with whatever amount of capital they may deem necessary. If they prosper and grow, they can and will add more capital. All of the big companies in the United States were small and some of them mighty weak in the beginning.

Remember, too, that certain kinds of insurance require no large capital at any time and essentially no "reserve." The membership is both assets and reserve. If the members pay according to their contracts, there will be money with which to meet liabilities as they become due. If they lapse, there will be no liabilities. This is particularly true of industrial insurance.

The danger to policy holders from failure of life companies is a phantom brought here for a purpose that ought to be easily detected. Any company can at any time reinsure or sell its risks, if such a course shall seem necessary or desirable. In fact, it can make money by disposing of its risks, great or small, for every company has to pay good money for its business.

If it is really desired to protect policy holders, enact laws that will make certain the punishment of agents and officers of companies for wrongdoing. The bills before you do not do this; they merely put burdens and restrictions upon the company, and burdens upon the company mean, invariably, burdens upon the policy holder.

Give the people a statute that will prevent the agent or officer of any company from interfering with the business or policies of any

other company, from "twisting" and breaking up the business of other companies, from misrepresentation and deception either to get business for himself or kill that of others.

A policy of insurance in the hands of the insured ought to be as sacred as any other form of property. At present, in the District of Columbia, it is not. An agent may and does go into the house of the ignorant and, finding a policy written by a rival company, says to the owner that his policy has an error in it which he wishes to correct. He takes this valuable contract and destroys it and the next day brings back one written by his own company, on which he receives a commission.

This sort of business is not carried on in the ignorance of the companies, but to a certain extent with their knowledge and approval; and it is one of the items which make the business costly and is one of the ways in which unlettered policy holders are cheated. It ought to be stopped, and, if perpetrated, severely punished.

The attempt of some of the bills before you—the Ames bill is not guilty of this—to subject all companies to a flat amount of bond deposit is as absurd as it is wicked.

It is like attempting to assess all farms at \$10,000 or \$100,000, regardless of size or value.

It is like attempting to prohibit any person from being elected to Congress who has not already served in that body.

It is like refusing to grant marriage licenses to such couples as can not "deposit" a certain number of children—can not show an already reared family of an arbitrarily fixed size.

Further, to make such provisions apply to companies now engaged in business is in violation of that clause of the Federal Constitution which forbids the enactment of laws impairing the obligation of contracts.

To bring bills of this character before Congress is no compliment to its Members.

LETTER FROM THE SECRETARY OF THE MUTUAL FIRE INSURANCE COMPANY OF THE DISTRICT OF COLUMBIA.

WASHINGTON, D. C., *May 10, 1906.*

HON. THOMAS E. DRAKE,
Superintendent of Insurance, City.

DEAR SIR: We would respectfully submit for the consideration of yourself and others concerned in the drafting of what is known as the Ames insurance bill, H. R. 18804, some facts relative to this company, with a suggested amendment to the bill.

A glance at the mode of operation of our company will show that it is conducted on a purely mutual basis. It was organized, by a special act of Congress, in 1855, and under its plan of operation the policy holders pay a cash premium, or interest on their deposit notes, the latter being subject to assessment. During the fifty-one years it has been in existence no assessment has been made, but instead the cash premium received has in nearly each year proven to be more than sufficient to pay the losses and expenses, and the overplus has been credited to the account of each policy holder, the total of the policy accounts forming the present assets of the company exclusive of deposit notes. On withdrawal of the policy, upon sale of the

property insured or otherwise, each member is given his or her proportion of the assets credited in the manner above stated. The company does not employ agents, neither does it pay commissions nor excessive salaries to its officers. The insurance carried on its books on December 31 last was approximately \$17,000,000. The premiums received during the past few years have annually amounted to about \$27,000, an estimated yearly saving to the policy holders of about \$50,000 over the usual rates of stock companies.

We, of course, are in hearty sympathy with the scope and general principles of the proposed act, but some of its provisions make radical changes in several instances in our business as now being conducted, and therefore we feel that their enactment into law will seriously affect its interests.

Section 57 of the proposed law provides that a member shall be entitled to one vote for each policy he holds. Since January 12, 1857, each of our policy holders has had one vote for "each piece of property separately and specifically insured." For sake of convenience a great many of our policies contain several houses or pieces insured therein. The proposed law would cancel many votes of the policy holders, or else would cause more than a majority of our 8,000 policies to be rewritten at a great labor and expense in order to give the same representation to each member. It is not customary for us to yearly rewrite our policies, but only to renew them on a blank provided in the policies.

Said section 57 also provides that a written notice shall be sent to each member notifying him of the time and place of holding the meetings. Section 12 of the charter of our company provides that notice of the meetings shall be given in two newspapers published in the city of Washington, at least two weeks previous thereto, and since the organization of our company in 1855 such notice has been given daily previous to the meeting.

Section 58 provides that members may vote by proxy, dated and executed within three months, and returned and recorded on the books of the company three days or more before the meetings at which they are to be used, but no officer or agent shall himself, or by another, ask for, receive, or procure to be obtained or use, the proxy to vote.

Since January, 1870, and likely prior thereto, the members of our company have used in giving proxies the following form, very few of which now in force bear any but a recent date:

I hereby constitute and appoint ——— my true and lawful attorney (with power of substitution and revocation), for me in my name and behalf, to act and vote at the annual meeting of the members of the Mutual Fire Insurance Company of the District of Columbia, to be held on the third Monday of January, 190—, and at all subsequent meetings of said company until this power shall be revoked. I revoke all former powers of attorney given by me in the premises.

In addition, for many years, certainly for thirty-six years, the officers of said company have voted proxies of absent members at the annual meetings. The business of the company by its charter is confined to the District of Columbia. The company is managed by policy holders, and members can at any time ascertain the true condition of affairs and if necessary make any desired changes in its officers. Its officers are well known, as a rule, to each policy holder

and have the confidence of the members, being deemed worthy by their administration and service. The proposed law (prohibiting an officer to ask for, receive, or use a proxy to vote) would more than likely cause a turmoil at each election which we fear would finally be the means of causing its dissolution. For (in the language of the president of the Connecticut Mutual Life Insurance Company, where proxy voting has been exercised since 1847, the officers usually voting the proxies) "this corporate right and privilege upon which the safety of the corporation depends should not be delegated to strangers, to exploiters, to promoters, to wreckers, to speculative financiers, who have nothing but their own selfish or nefarious ends to serve."

Many of the members of this company know little of the business of insurance and have learned to rely upon the officers to safely conduct the business. The fact that they have for so long a period intrusted to the officers their power of representation in the meetings of the company, usually about 9,000 of the 15,000 voting risks, is a striking evidence of their confidence. We do not feel that the members should be deprived, in an institution of this kind, of this right of having the officers represent them. Being a purely local institution the members obtain their information in regard to the conduct of the company at first hand, and can easily make a change in the management should they deem the same to be necessary.

Therefore, in view of the local character of this company and its long operations under conditions that have been so successful, we feel that Congress would not desire to make any change that would seem uncalled for or not desired by those directly interested. Accordingly, we would respectfully suggest and request that the act be amended so as not to apply to purely mutual fire insurance companies confining their business wholly to the District of Columbia.

Yours, very truly,

L. PIERCE BOTELER, *Secretary.*

LETTER FROM THE PRESIDENT OF THE EUREKA LIFE INSURANCE COMPANY, BALTIMORE, MD.

BALTIMORE, MD., *May 14, 1906.*

THOMAS E. DRAKE, Esq.,

Superintendent of Insurance, Washington, D. C.

DEAR MR. DRAKE: I inclose you a copy of the proposed amendment.

Yours, truly,

W. S. GILLESPIE.

Insert after the word "policy" in line 18, page 7, the following:

Also, that any organization, association, society, or fraternal beneficiary order, with or without a ritualistic form of government, but which collects its dues or assessments weekly or biweekly, shall be deemed to be an insurance company and shall comply with the provisions of this act governing such organizations.

A fraternal beneficial association shall collect its dues or assessments from its members monthly, bimonthly, or quarterly, and shall cause to be delivered to the residence or post-office address of any such member, notice, two weeks in advance, that such assessment or payment be due, and it shall not be lawful for any such fraternal beneficial association to collect from any member more than twelve of such payments in any one year.

Also, that any organization, association, society, or fraternal beneficiary order, with or without a ritualistic form of government, but which collects its dues or assessments weekly or biweekly, shall be deemed to be an insurance company, and shall comply with the provisions of this act governing such organizations.

MEMORANDUM NATIONAL SURETY COMPANY.

Companies shall be required to carry as an unearned premium reserve until the expiration of the bond in the sum of 50 per cent of the annual premium paid, or agreed to be paid, and no company shall be permitted to deduct its legal-reserve liability, month by month, as the term of the bond becomes partially expired.

No company shall be permitted to issue bonds, policies, or renewals thereof during the months of a certain year, but which become effective in the following year, taking credit in the preceding year for the paid or unpaid premiums thereon, nor shall such companies be required to carry a liability on such bonds, policies, or renewals so issued during such certain year (this is to prevent any company from executing bonds, renewals, or continuations in the months of November and December, taking credit for such business in the year when these bonds, policies, or renewals are issued, but where they become effective the following year).

The value of real estate holdings of companies shall be computed upon their net earning capacity on a basis of at least 3 per cent, and no more. Companies may enter in their assets items known as "bills receivable" where the standing of the debtors are above question, but in no case shall any "bills receivable" be permitted to be carried as assets by any company unless such bills shall be due and payable within twelve months from the date of the financial statement being made by any such company.

Companies may carry as assets items known as "advances on contracts" where the company has advanced money to contractors, where it is surety and where the company has reasonable grounds for believing it is secured and that the advances so made will be repaid within a period of twelve months after the said financial statement shall have been executed by the company.

All companies shall be required to report to the commissioner the full amount of each and every bond, policy, or renewal issued by such company, and no company shall be permitted to execute a bond for a specific sum and report the bond to the commissioner for any lesser amount.

No company shall be permitted to execute a bond where the risk is computed by such company at over 10 per cent of the capital and surplus at the time of the writing of such bond unless such company shall have reinsured the amount in excess of said percentage in a company organized under the laws of the United States, and in no event shall any company execute any bond under any circumstances for an amount in excess of 20 per cent of its capital and surplus.

Every company shall report to the commissioner each and every action brought against it alone or brought against the principal on any bond executed by it, and where such company is joined as a co-defendant, showing the amount of liability being carried for each and every case.

Whenever any company shall have deposited sums of money according to the law in various States, known as general deposit or special deposit, the company shall be entitled to credit for the full amount of such deposits, instead of such assets being eliminated from the financial statement of said company, less the amount of reinsurance reserve and unpaid losses the company is carrying as liabilities in such States.

The argument should be used that surety companies, as far as the execution of bonds are concerned (outside of fidelity and fiduciary bonds), is in reality a banking or trust company, whose credit it is lending to the principals, where such bonds are executed, instead of being regarded as an insurance company. Special provision, therefore, is necessary for the proper conduct of surety companies, and they should not be put in the same class with casualty companies or other insurance companies. It is frequently the case claim will be made against a surety company for a large sum of money, and the company in the end, by reason of obtaining salvage, may suffer no loss, and in this respect a surety company is almost entirely dissimilar from any other kind of insurance. It is rarely, if ever the case, where much salvage is recovered by fire companies, and if so a small percentage. There is never any recovery for accident companies, casualty companies, and only occasionally for burglary companies.

LETTER FROM THE SECRETARY OF THE EQUITABLE INDUSTRIAL LIFE INSURANCE COMPANY, DISTRICT OF COLUMBIA.

WASHINGTON, D. C., *May 7, 1906.*

DEAR DRAKE: Here are two amendments. Will your department propose them? Is it necessary for the company to appear and argue? There should be no contention as to fairness among the informed.

Respectfully,

ALLEN C. CLARK, *Secretary.*

MR. THOMAS E. DRAKE,
Superintendent of Insurance.

Page 26, in the eighth line, after the word "dollars," insert "except the companies incorporated before the date of this act; the capital of the companies so before incorporated shall be that required by law at the time of their incorporation."

Page 47, in the eighth line, after the word "policy," insert "Other than industrial policies."

STATEMENT OF WILLIAM C. JOHNSON.

Mr. Chairman and gentlemen of the committee, I have been carefully over the proposed amendments to H. R. 18804, commonly known as the Ames bill. With one exception, and with the corrections noted below, the amendments all seem to be proper and in the right line.

Please note the following suggested corrections to these amendments:

On page 15, line 18, it is proposed to insert, after the word "issued," the words "after the thirty-first of December." "Nineteen hundred and six" should be added in order to make the date certain and definite.

On page 16, at the end of line 11, it is proposed to insert certain matter set out in the amendments forwarded, and the matter in question winds up with the words "superintendent of insurance of this

State." These words should of course be stricken out and the proper description put in as follows: "The insurance commissioner of this District of Columbia."

On page 23, line 6, it is proposed to insert certain new matter after the word "companies," and in view of the new matter to be inserted, the words "one per cent per thousand dollars" should of course be omitted. The striking out of these words is not noted in the memorandum sent me.

On page 33 it is proposed to put in new provision ninth, in the next to the last line of which appears the word "corporations." The word should be "corporation," and the "s" should be omitted.

On page 34, line 3, it is proposed to insert the words "a domestic" before the word "company." The word "the" which now appears before the word "company," should accordingly be stricken out.

On page 35, line 12, it is proposed to strike out the words "corporate powers shall thereby expire." The next word "and" should also be stricken out if the sentence is to make sense.

On page 37, at the commencement of line 2, it is proposed to insert certain words. This necessitates the striking out of the word "that," with which the sentence opens. The striking out of this word is not noted in the matter sent me.

On the memorandum sent reference is made to page 37, section 7, which undoubtedly should be section 37, which is the one referred to.

On page 38 it is proposed to strike out in line 22 the words "shall any" and insert in their place the word "no." To give meaning to the sentence the word "shall" should be inserted after "person" in the same line, so that the sentence will read "and except as herein-after provided no one person shall act or vote as proxy," etc.

On page 42, line 10, it is proposed to strike out section 47 and insert a new section. In the new section proposed in its fourth line, the next to the last word, after the word "annually" now appears the word "of." It should be "with."

On page 44, line 7, it is proposed to strike out section 48 and insert a new section. In the fifth and sixth lines the proposed new section as given in the memorandum before me reads, "computed according to the standard adopted by it under section 84 of this chapter." This section is evidently copied from a recent New York statute, and reference is to the section of the New York law and not to the section of the Ames law. It should be made to read "computed according to the standards provided by section 10 of this act."

The various amendments suggested to pages 44 to 47 do not refer to the lines as given in the printed copy of the bill before me. Either the bill has been reprinted, or else in the memorandum the lines are not correctly stated.

I have not attempted, in going over this matter, to suggest any new amendments, but merely to suggest needed corrections to those before me.

I referred in my opening paragraph to one proposed amendment which is improper, in my judgment, and which doubtless has an ulterior purpose behind it. I refer to the proposed amendment on page 36, line 17, "provided that at least a majority of said board shall be residents of the District of Columbia." It is, as I understand, proposed that Congress shall adopt a law carefully and properly drawn, which will serve as a model which should be followed

by the States generally. If the District adopts a law which in the judgment of trained insurance men is a sound one from all points of view, it might very possibly lead men organizing new companies to incorporate in the District, so as to be subject to the provisions of this law. If the prestige of the law were such that it will allow new companies to select the District of Columbia as the place for incorporation, it would follow naturally that the States would be led to adopt a similar law. If a body of men in the State of New York sought incorporation under the District law, they should be able to incorporate there. It would be in the interests of the District itself and in the interests of good insurance practice to have them incorporate under a model law. But the requirement that a majority of the directors should live in the District of Columbia, in my judgment, will prevent the incorporation of new companies in the District.

There are not so many leading business men, or eminent lawyers, or sound bankers, or representative citizens living in the District of Columbia that they would serve to go around if there were many new companies incorporated. It might possibly be that certain interests should desire to incorporate a new company, making up their board, say, of thirty-six, and having on it a few representative men from New England, a few from the South, a few from the Middle West, some from the far West, some from the Southwest, some even from Canada or from abroad. I am inclined to think that whoever suggested this amendment suggested it purposely, in order to prevent the incorporation of new companies in the District of Columbia, or for some ulterior purpose. It seems to me that putting this amendment in simply destroys the object which I understand is in view of having Congress pass such a model law that it will meet with the approval of the public and insurance men generally and enforce its imitation by other jurisdictions. If no new companies incorporate under this law when it is passed other jurisdictions may conclude that it is not a sound and attractive one, and that if adopted it would be to discourage the organization of new companies, and so would refrain from adopting a similar one.

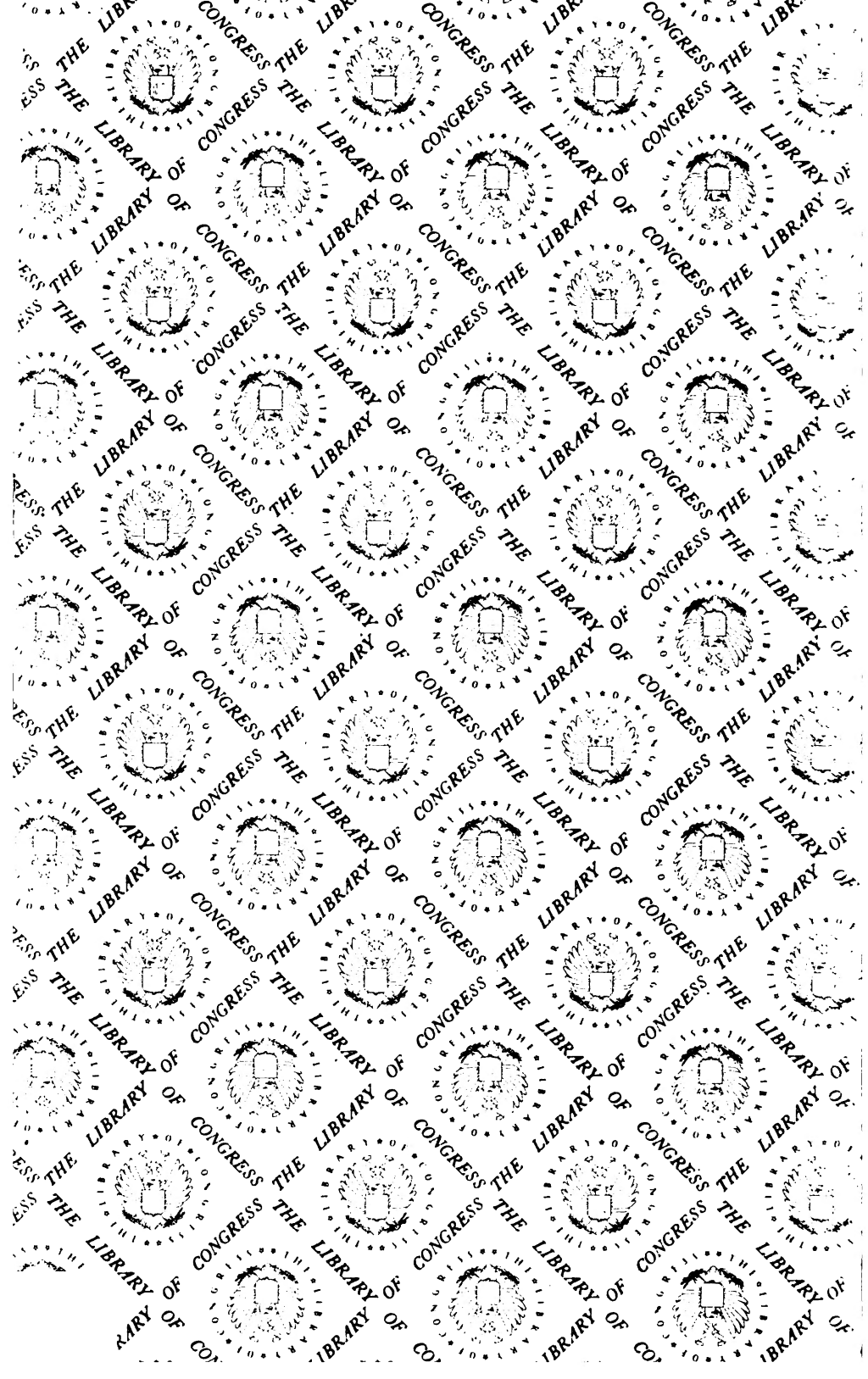
As I look at it I can see no sound reason for the amendment in question.

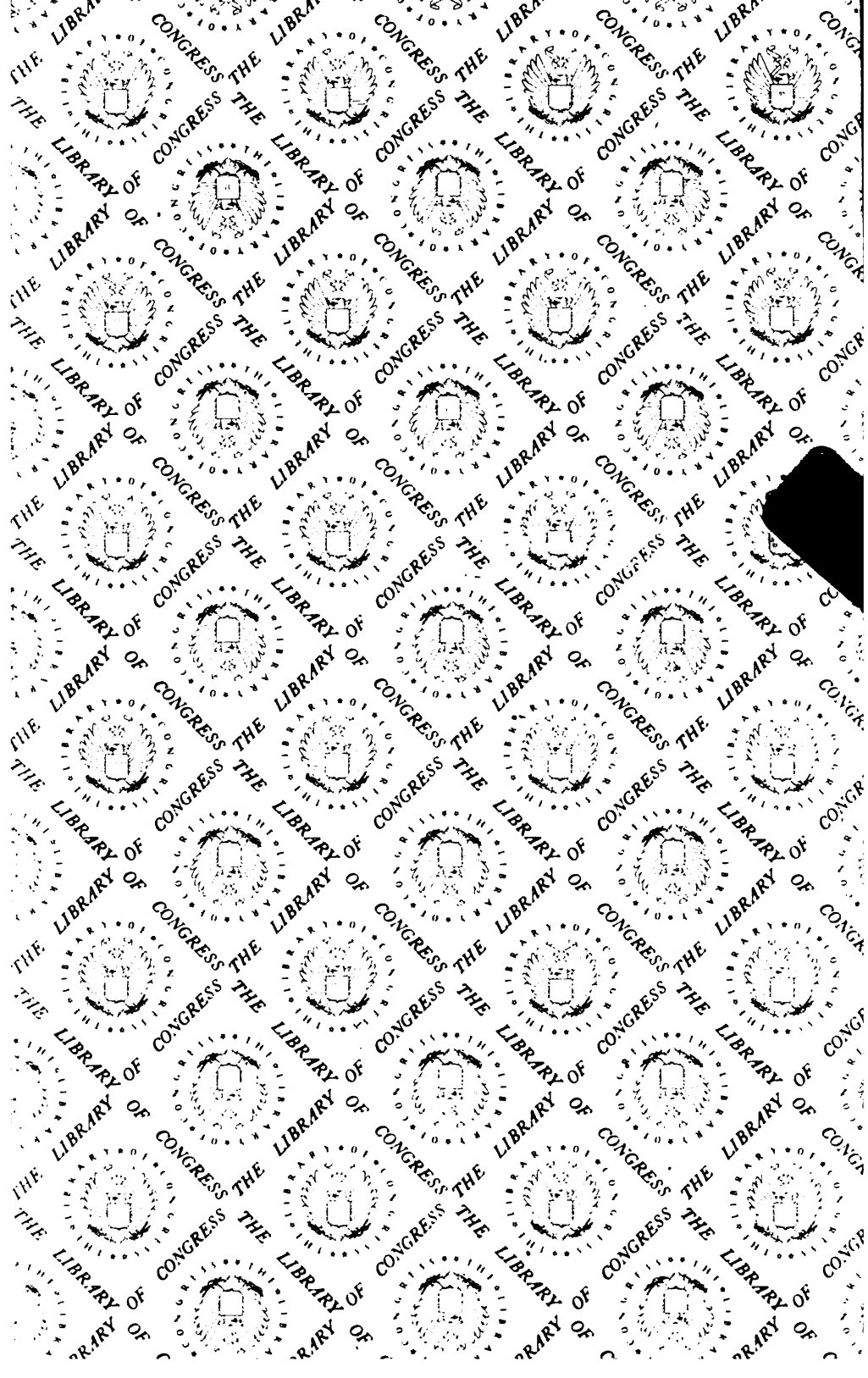
Mr. STERLING (in the chair). I believe that closes the hearing. No other gentlemen here have indicated any desire to address the committee, and therefore we will declare the committee adjourned.

(Thereupon, at 4.45 o'clock p. m., the committee adjourned.)

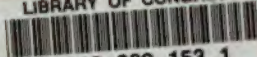
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